

No.

In The
Supreme Court of the United States

◆

RADIO COMMUNICATIONS CORPORATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
AND THE UNITED STATES OF AMERICA,

Respondents.

◆

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

◆

PETITION FOR A WRIT OF CERTIORARI

◆

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QUESTION PRESENTED

Whether the “best reading” of the Low Power Protection Act (“LPPA”) mandates nationwide Low Power Protection denial, as if the LPPA had not been enacted, where:

1. The lower court assumed that a trade association had standing and redressed its speculative third-party injury claim, FCC 23-112 ¶ 38, Pet. App. 77a-78a, asserted on behalf of unknown Full Power broadcasters the LPPA seeks to constrain, even though that injury claim is plainly barred by Article III associational standing rules;
2. The lower court ignored this Court’s unanimously rendered interpretive rule that statutory definitions are “virtually conclusive,” altered statutory definitions to nullify the LPPA’s and 47 U.S.C. § 307(b)’s nationwide protection and licensing mandates, and produced an LPPA reading with no substantial effect upon interstate commerce; and
3. The lower court rejected First Amendment and must-carry issues based upon RCC’s purported LPPA ineligibility, but inexplicably and inconsistently used the LPPA-ineligible trade association’s speculative third-party injury claim to disqualify RCC from LPPA protection.

PARTIES TO THE PROCEEDINGS BELOW

All parties are disclosed in the case caption above.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner, Radio Communications Corporation, is a nonpublic, closely held company with no publicly owned subsidiaries or owners, and is organized and located in Connecticut. RCC's sole owner is a citizen of the United States residing in Connecticut.

RELATED CASES

The D.C. Circuit's Opinion is reported at 141 F.4th 243 (CADDC 2025). Pet. App. 1a.

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*ON PETITION FOR A WRIT OF CERTIORARI
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PETITION FOR A WRIT OF CERTIORARI

Radio Communications Corporation, by its counsel, respectfully petitions for a writ of certiorari to review the Opinion and Judgment of the United States Court of Appeals for the District of Columbia Circuit in No. 24-1004, issued June 27, 2025. Pet. App. at 1a-23a.

OPINION BELOW

The D.C. Circuit's Opinion is reported at 141 F.4th 243 (CADC 2025). Pet. App. 1a.

JURISDICTION

The D.C. Circuit’s Judgment in this matter issued on June 27, 2025. Pet. App. at 22a. The instant Petition is timely filed within 90 days thereafter. U.S. Sup. Ct. R. 13.1, 13.3. The Court’s jurisdiction is invoked under 28 U.S.C. § 1254(1). The D.C. Circuit’s jurisdiction arose under 47 U.S.C. § 402(a) and 28 U.S.C. § 2342(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced in the Appendix. Pet. App. 122a-128a.

STATEMENT

This case concerns the first judicial interpretation of the Low Power Protection Act (“LPPA”) enacted on January 5, 2023. 136 Stat. 6193 (2023); 117 P.L. 344; Pet. App. at 122a. As the LPPA’s title reveals, Congress directed the Federal Communications Commission (“FCC”) to protect Low Power TV stations (sometimes “LPTV”) regarding, *inter alia*, spectrum displacement by Full Power TV stations by upgrading LPTV stations to co-equal “primary” license status, Opinion, Pet. App. 6a,¹ but the lower court embarked upon another course.² The lower

¹ See A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 221 (2012) *citing* *INS v. Center for Immigration Rights, Inc.*, 502 U.S. 183, 189 (1991) (“the title of a statute or section can aid in resolving an ambiguity in the legislation’s text”). RCC Reply at 2 n.2, CADC No. 24-1004.

² After *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024), appeals courts are charged with finding a statute’s “best reading”
(continued...)

court read the LPPA not as protecting LPTV licenses, but as protecting Full Power TV stations, the very broadcasting group the LPPA seeks to constrain. Opinion, Pet. App. 6a. That topsy-turvy result prohibits RCC from prosecuting a protection application under the LPPA and is reversible error. 5 U.S.C. § 706(2).

The FCC created LPTV in 1982 and it could have protected LPTV at any time. Instead the FCC was content to watch its fundamentally flawed LPTV licensing program flounder for decades: the FCC oddly granted LPTV's Full Power TV competitors the regulatory power to displace LPTV licensees even though LPTV was created to compete against Full Power TV.³ The FCC's unstable LPTV licensing program has resulted in a combined failure of more than 600 LPTV and Class A stations between 2010-

²(...continued)

rather than merely determining whether the agency's reading is permissible. Accordingly, when statutory interpretation, not facts, is the focus of an agency review proceeding, referring to the lower court as the principal actor is appropriate and no disrespect is intended.

³ FCC Chairman Carr, July 23, 2025: "For decades, the FCC's approach to regulating the broadcast industry has failed to promote the public interest. That has only made it harder for trusted and local sources of news and information to compete in today's media environment." <https://docs.fcc.gov/public/attachments/DOC-413180A1.pdf>. *Compare e.g.*, RCC Reply at 9-10, CADC No. 24-1004 ("The Commission's decades long regulatory failure has led to highly concentrated media ownership and dangerous information bubbles. . . . FCC 23-112's elevation of media concentration in service to NAB's Clients, directly contradicting clear Congressional direction to protect LPTV, is arbitrary and capricious.").

2023.⁴ This is the FCC’s years-long record of regulatory failure Congress saw when it enacted the LPPA in 2023, a history the orders below ignore as if the FCC were painting on a blank canvas. *FCC v. Consumers’ Rsch.*, 145 S. Ct. 2482, 2536 (2025) (statutes are construed in historic context).

In 1999 and 2023 Congress gathered the political capital to try to protect LPTV, but the FCC barely reacted. Under two statutes which have LPTV protection as their mandates, the FCC favored Full Power TV licenses, culminating in this case where the lower court denied LPPA protection nationwide as if it were the Low Power Protection Denial Act.

The FCC’s Low Power TV licensing program, now spanning over four decades, has resulted in significant losses of Low Power and Class A licenses, stranded investments, and inhibited new investment in broadcast equipment and services. RCC is now operating under its third Low Power TV license, having previously lost two Low Power TV licenses and a Class A license. Rather

⁴ Between 2010 and release of FCC 23-112 the number of LPTV licenses declined from 2,387 to 1,889, a 20.9% license loss; the number of CBPA “protected” Class A licenses declined from 525 to 380, a 27.6% Class A license loss, a combined total of 643 lost low power licenses. As of April 2025 that combined lost license total had increased to 743 lost low power licenses since 2010. *See* RCC’s April 25, 2025 Rule 28(j) Letter [2112753], CADC No. 24-1004. The lower court ignored the station loss facts, as reported by the FCC itself, without comment. Note: The FCC’s periodic station totals publications make clear that Class A and LPTV licenses are distinct license classes even though each license operates at “low power” compared to “full power” TV licenses.

than protect RCC’s current Low Power TV license, the proceedings below approved a rule which prohibits RCC, and other Low Power TV licensees covering more than 99% of the Nation’s population, from even applying for the LPPA’s protection.

A. Congress Twice Protects Low Power TV

Congress has twice responded to the FCC’s decades of regulatory failure regarding television competition, concentrated media, stranded capital, and restrained investment by enacting LPTV protection statutes in 1999 and 2023. The Community Broadcasters Protection Act of 1999 (“CBPA”), P. L. 106-113, 113 Stat. 1501A-594, and 2023’s LPPA protect LPTV licenses by elevating eligible Low Power TV licenses to “primary” Class A status and vesting in them “the same license terms” as Full Power TV licenses, except as expressly limited by statutory text. *See* 47 U.S.C. § 336(f)(1)(A)(i) (CBPA);⁵ LPPA § 2(c)(3)(A), Pet. App. at 125a. In 1999 Congress determined that “license limitations, particularly the temporary nature of the [LPTV] license, have blocked low-power broadcasters from many having access to capital, and have severely hampered their ability to continue to provide quality broadcasting, programming, or improvements.”

⁵ Class A stations licensed under the CBPA possess the “same license terms . . . as the licenses for full-power television stations except as provided in this subsection.” Class A stations licensed under the LPPA possess “the same license terms . . . as a license for a full power television broadcast station, except as **otherwise expressly** provided in this subsection.” LPPA Section 2(c)(3)(A), Pet. App. 125a (emphasis added). Compared to the CBPA, the LPPA restates and reemphasizes the FCC’s inability to minimize Class A protections.

CBPA, P. L. 106-113 § 5008(b)(3), 113 Stat. 1501A-594, 595. Those conditions persisted after implementation of the CBPA and led to enactment of the LPPA in 2023.

B. The Opinion Remedies Injury Claims For Unaffected Bystanders Who Lack Standing

1. The National Association of Broadcasters (“NAB”), acting as plaintiff in the agency rulemaking proceeding, asserted a speculative third-party injury, claiming that its unnamed members might want to expand their service areas in the future, and that implementation of the LPPA might eliminate that future expansion possibility. FCC 23-112 ¶ 38, Pet. App. 77a-78a. NAB improperly used the LPPA rulemaking proceeding as a petition to deny vehicle seeking nationwide denial of the LPPA’s protections.

RCC opposed NAB’s speculative injury claim and argued that “to qualify as an association representing the interests of other parties which are attempting to deny or limit the rights or interests of another, an association must ‘allege that one or more of its members has standing.’” RCC Reply Comments, MB Docket No. 23-126, Def. Apdx. 00076-77, 82, CADC No. 24-1004 *citing In the Matter of Consent to Transfer Control of Certain Subsidiaries of TEGNA Inc.*, 38 FCC Rcd. 1282, 1288 n.46 (MB 2023), *citing In the Matter of Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 F.C.C.2d 89, 97 (1980), *citing Warth v. Seldin*, 422 U.S. 490, 511 (1975).

NAB failed to identify any specific broadcaster it represented and thus failed to establish associational standing authorizing it to seek denial of RCC’s and other

LPTV licensees’ assertion of protections under the LPPA, including cable TV must carry rights. NAB’s use of the FCC’s rulemaking proceeding as a tool to harm LPTV licensees was plainly beyond the scope of a properly established rulemaking proceeding established under the LPPA to explore LPTV license protection. Moreover, the NAB’s effort to use the LPPA to limit LPTV rights under the LPPA, merely because Full Power stations might want to expand coverage in the future, was improperly speculative. RCC Main Brief at 12, 27, 37, 40-41, and RCC Reply at 1-3, CADC No. 24-1004.

2. Rather than address RCC’s associational standing argument, the FCC leaned into NAB’s speculative third-party injury claim and adopted NAB’s injury claim as the FCC’s sole justification for reading the LPPA in a non-nationwide manner. The FCC quoted from NAB’s rulemaking comments to explain:

As NAB notes, elevating LPTV stations from secondary to primary Class A status comes at the cost of “effectively block[ing] coverage and service improvements by full-service stations.” . . . We decline to read the LPPA as promoting maximum elevation of LPTV stations to primary status; rather, Congress adopted a much more balanced approach.

FCC 23-112 ¶ 38, Pet. App. 77a-78a.

FCC 23-112 adopted NAB’s anti-competitive objection to the LPPA statute itself and determined that NAB “need not ‘represent’ or seek to ‘protect’ LPTV licensees in order to file comments in this proceeding.” FCC 23-112 n.28, Pet. App. 35a. NAB failed to intervene in the appeals court litigation even after RCC served it with a courtesy copy of RCC’s January 23, 2024 Emergency

Motion [2037054]. NAB has no *bona fide* interest in this proceeding, yet the FCC granted it relief. RCC Main Brief at 12, CADC No. 24-1004.

The FCC completely ignored its own associational standing rule and determined that parties could seek to harm LPTV licensees by asserting speculative future injury claims, and within the very LPPA rulemaking proceeding ostensibly instituted to protect those same LPTV licensees from harm. FCC 23-112 n.28, Pet. App. 35a. Neither the lower court nor the FCC addressed NAB's speculative injury claim, nor the fact that filing injury claims against LPTV licensees was beyond the scope of the LPPA protection rulemaking proceeding, nor the fact that the orders below protect the Full Power TV broadcasters the LPPA seeks to constrain. Opinion, Pet. App. 6a.

RCC argued that the FCC's LPPA reading was “absurd,” “irrational,” and “nonsensical” because its non-nationwide reading arose from the FCC's improper purpose of protecting NAB's Clients, the very broadcasters the LPPA seeks to constrain. RCC Brief at 27 and RCC Reply at 25, CADC No. 24-1004. The notion of politically “independent” federal agencies is currently the focus of litigation and scholarly debate,⁶ but nothing in the LPPA or the Federal Communications Act (“FCA”) authorizes the FCC to serve as federal court legal representative for private-party economic interests rather than the public interest. 47 U.S.C. § 307(a),(b) (FCC “shall grant”

⁶ *Slaughter v. Trump*, 2025 U.S. Pet. App. LEXIS 22628 (CADC Sept. 2, 2025) (reinstating a fired FTC commissioner in a split decision); <https://www.theregreview.org/2025/06/06/may-the-demise-of-agency-independence-and-the-fcc/>.

broadcast licenses nationwide in the public interest), Pet. App. 127a. “The purpose of the Communications Act and the LPPA is the promotion of broadcast outlets, not the elimination of them.” RCC Main Brief at 20, CADC No. 24-1004.

The FCC assumed a novel and improper litigation position in this appellate case: as legal representative for a trade association’s speculative third-party injury claim asserted on behalf of large broadcasters fully able to represent themselves, *Powers v. Ohio*, 499 U.S. 400, 411 (1991) (third-party representation cannot arise unless the injured party is hindered from seeking relief), the group of broadcasters the LPPA constrains and who lacked standing to pursue their speculative injury in federal court in their own right. That novel and disturbing litigation position easily melts away upon even a cursory application of Article III standing doctrine.

FCC 23-112 ¶ 38, Pet. App. 77a-78a presents a disturbing image of the FCC representing and promoting the private, anti-competitive interests of a national commercial TV trade association with members fully able to represent themselves, *Powers*, 499 U.S. at 411, rather than protecting LPTV licensees like RCC, the LPPA’s nominally protected class of broadcasters. However, like “the proverbial dog that did not bark,” the combined silence of the lower court and the FCC regarding the special protection accorded to NAB is telling. *Diamond Alt. Energy, LLC v. EPA*, 145 S. Ct. 2121, 2132 (2025).

3. The lower court, inexplicably assumed NAB’s associational standing and redressed NAB’s speculative third-party injury claim, without comment. Moreover, the lower court condoned the FCC’s literal transcription of NAB’s anti-competitive position into federal law even

though that position was utterly devoid of agency factual analysis, expertise, or judgment. FCC 23-112 ¶ 38, Pet. App. 77a-78a. The lower court ignored RCC’s reminder of its obligation to examine NAB’s Article III standing. RCC Main Brief at 40, CADC No. 24-1004; RCC’s June 11, 2025 Rule 28(j) Letter [2120334], CADC No. 24-1004, *citing FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 369 (2024) (holding that alleged “downstream economic injuries” do not support standing when those injuries are speculative and lack support in the record); *see also Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110 (2001) (*per curiam*) (“We are obliged to examine standing *sua sponte* where standing has erroneously been assumed below.”).

Article III standing required NAB, as plaintiff before the FCC and then as non-party plaintiff in the lower court through the FCC’s representation, to allege an injury in fact, caused by RCC, that was redressable by the appeals court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). An Article III injury is “an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.” *Garza v. Woods*, 2025 U.S.App. LEXIS 21642 at 7-8 (CA9 Aug. 25, 2025) *citing Lujan*, 504 U.S. at 560. To maintain an associational standing claim in federal court NAB must have members who would otherwise have standing to sue in their own right; whose interests to be protected are germane to the organization’s purpose; and neither the claim asserted nor the relief requested requires the participation in the lawsuit of each of the individual members, *Nat’l Ass’n of Priv. Fund Managers v. SEC*, No. 23-60626, 2025 U.S.App. LEXIS 21717, at 7 n.5 (CA5 Aug. 25, 2025) *citing Hunt v. Wash.*

State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977), and the Full Power broadcasters had to demonstrate that they were unable to represent themselves. *Powers*, 499 U.S. at 411.

Neither the Opinion nor FCC 23-112 point to anything in the LPPA showing a Congressional intent to protect the lobbyist's Full Power clients "at the cost" of the Low Power TV licensees the LPPA was enacted to protect. Protecting NAB and its clients was not a proper consideration in the rulemaking proceeding. RCC Main Brief at 17, CADC No. 24-1004, *citing Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (it is "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider . . . or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise").

The lower court allowed NAB to pursue a speculative third-party injury claim in federal court through the FCC without any analysis or comment. The government cannot "target a business or industry through stringent and allegedly unlawful regulation, and then evade the resulting lawsuits by claiming that the targets of its regulation should be locked out of court as unaffected bystanders." *Diamond Alt. Energy*, 145 S. Ct. at 2142. The Opinion assumed that unaffected bystander NAB clients, who voluntarily stayed out of the courtroom, but who were targeted by government regulation for relief, had standing to pursue their speculative claim at the expense of RCC, a party suffering actual harm caused by the FCC's action.

C. Altering The LPPA's Two DMA Definitions

1. The LPPA's two "Designated Market Area" ("DMA") definitions, LPPA Sections 2(a)(2)(A),(B), Pet. App. 123a, include all DMAs nationwide whether defined as Nielsen Media Research defined DMAs, Section 2(a)(2)(A), or as "equivalent local markets." Section 2(a)(2)(B).⁷ Neither DMA definition is limited by reference to any TV household number or otherwise. Those two statutory definitions are "virtually conclusive" and unalterable absent some "exceptional reason." *Sturgeon v. Frost*, 587 U.S. 28, 57 (2019).

2. The Opinion uses three steps to find that the LPPA implicitly protects NAB's clients and cable TV service providers rather than RCC and other LPTV licensees covering more than 99% of the Nation's population. First, the lower court altered the large market DMA definition, Section 2(a)(2)(A), Pet. App. 123a, by adding a maximum 95,000 TV household limitation to it, thus creating nationwide LPPA protection Disqualification Regions. Opinion, Pet. App. 3a; RCC Main Brief at viii, 4, 13-14, 32 n.15, 34-36, 39 n.17, CADC No. 24-1004.

Second, the lower court negated the small local market DMA definition, Section 2(a)(2)(B), Pet. App. 123a, finding that "local markets" are "not 'equivalent' to the system established by Nielsen, which defines larger

⁷ For ease of reference, the 210 Nielsen defined DMAs are referred to herein as "large market DMAs." Opinion, Pet. App. 8a, explaining that Nielsen DMAs "define[] larger geographic regions than community of license." The "local market" DMAs are referred to herein as "small local market DMAs" because "the LPPA concerns LPTV stations that service small areas with low populations." Opinion, Pet. App. 17a.

geographic regions than community” at Section 2(a)(2)(A). Opinion, Pet. App. 7a-8a, 13a, 15a-16a. However, the LPPA does not mandate that “equivalence” can only mean congruently-sized “geographic regions.” RCC argued that “equivalence” between the two market types means “nationwide” and neither market definition specifies a population limitation, but the lower court ignored RCC’s statutory interpretation to keep in place the FCC’s remedy for NAB’s speculative third-party injury claim. FCC 23-112 ¶ 38, Pet. App. 77a-78a; RCC Main Brief at 4, 10-11, 24, 26-28, 29-30, 34-35, 37-38, 40-41, 44-45, 53, and RCC Reply at 24-25, CADC No. 24-1004. Reading both definitions to mean “larger geographic regions” improperly renders the small local market DMA definition at Section 2(a)(2)(A) superfluous. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (courts must construe statutes so that “no clause, sentence, or word shall be superfluous, void, or insignificant”) (internal quotes omitted). RCC Reply at 24-25, CADC No. 24-1004 (“A basic rule of statutory interpretation is that all words in a statute are to be given effect, yet the Commission renders Section 307(b) and Section 230 superfluous for Class A licensing.”).

Third, the lower court used its revised DMA definition to infer a change to the manner of issuing Class A licenses from 47 U.S.C. § 307(b)’s, Pet. App. 127a, decades-old nationwide community licensing mandate, to issuing Class A licenses on a non-nationwide basis to several sparsely populated, large market DMAs. Nationwide licensing is expressly required by § 307(b) and there is no express override of that mandate in the

LPPA.⁸ RCC Main Brief at 19-23, CADC No. 24-1004 (“Instead of discussing the Commission’s responsibility under Section 307(b) and the LPPA to issue Class A licenses on nationwide basis, FCC 23-112 does the exact opposite and explicitly protects NAB’s Clients.”).

REASONS FOR GRANTING THE PETITION

A. *Diamond Alternative Energy & The Other Side Of The Standing Coin: The Targets Of FCC Relief Are Just Unaffected Bystanders*

On June 20, 2025 the Court in *Diamond Alt. Energy, LLC v. EPA*, 145 S. Ct. 2121 (2025) reversed the D.C. Circuit’s judgment that certain parties lacked standing to litigate alleged injuries caused by the EPA’s approval of California’s Clean Air Act regulations on the grounds that they were unaffected bystanders. Seven days later the Opinion once again relegated a claim seeker, this time NAB, to unaffected bystander status, the difference being that NAB and its Full Power clients were the explicit targets of speculative third-party regulatory relief at the expense of RCC. FCC 23-112 ¶ 38, Pet. App. 77a-78a. The FCC gave the LPPA a non-nationwide reading which barred RCC, and other Low Power TV licensees covering more than 99% of the Nation’s population, from even applying for the LPPA’s protection. The lower court’s

⁸ RCC argued below that FCC 23-112’s LPPA interpretation, as applied, violated constitutional requirements regarding regulation of local economic activity. If the FCC’s limited LPPA reading were the only possible reading, then the LPPA would be unconstitutional. However, RCC provided two reasonable LPPA readings which satisfy all constitutional and statutory concerns. Moreover, the LPPA has two DMA definitions and it is literally impossible for there to be just one LPPA interpretation as the lower court determined.

Opinion failed to address NAB's standing even though it granted NAB's speculative third-party relief.

The government cannot "target a business or industry through stringent and allegedly unlawful regulation, and then evade the resulting lawsuits by claiming that the targets of its regulation should be locked out of court as unaffected bystanders." *Diamond Alt. Energy*, 145 S. Ct. at 2142. Similarly, the federal courts cannot ignore the standing of unaffected bystander NAB which is targeted by government regulations for relief at the expense of RCC, a party suffering actual harm caused by the FCC's action.

Article III standing is so important in federal litigation that courts are "obliged" to raise it on their motion if the parties fail to raise it. *Adarand Constructors, Inc.*, 534 U.S. 103. Given the Court's recent remand to the D.C. Circuit regarding entities it had improperly consigned to "unaffected bystander" status in *Diamond Alt. Energy*, the lower court should have examined NAB's standing to seek speculative third-party relief through FCC federal court representation, rather than consigning NAB to "unaffected bystander" status which assumed NAB's standing. The Opinion does not point to any legal theory allowing relief for a claimant who plainly lacked standing.

More than 25 years ago Congress found that FCC "license limitations, particularly the temporary nature of the [LPTV] license, have blocked many low-power broadcasters from having access to capital, and have severely hampered their ability to continue to provide quality broadcasting, programming, or improvements." CBPA, P. L. 106-113 § 5008(b)(3), 113 Stat. 1501A-594, 595. Congress explicitly determined that granting LPTV

license permanence would remedy many of the problems resulting from the FCC's chronic mismanagement of the television industry. The decisions below improperly reject that determination and the Nation remains trapped in dangerous information bubbles caused by the FCC's decades of regulatory failure. RCC Reply at 9-10, CADC No. 24-1004.

RCC's June 29, 2024 Rule 28(j) Letter [2062316], CADC No. 24-1004, *citing Loper Bright*, informed the lower court that granting the FCC's request for *Chevron* deference was not possible. The lower court ignored RCC's information and reviewed the FCC's continuation of decades of broadcast industry regulatory failure, as Chairman Carr succinctly put it, *see* n.3 at 3, *supra*, as if *Chevron* were still a guiding light, the Opinion uncritically repeating the contents of the FCC's Brief while ignoring RCC's arguments. *See* n.14 at 24, *infra*. The Nation remains trapped in dangerous information bubbles Congress has twice attempted to burst. This Court's intervention is warranted.

B. Federal Court Access: Federal Agencies Are Not Alter Egos For Trade Associations

FCC 23-112 ¶ 38, Pet. App. 77a-78a is not the product of agency expertise, fact-finding, or deliberation, it explicitly acknowledges that the FCC's LPTV protection denial rules were created to remedy NAB's speculative third-party injury claim. Neither the FCC nor the Opinion point to anything in the LPPA showing a Congressional intent to protect the NAB's Full Power clients "at the

cost” of the protected LPTV license class.⁹ RCC Main Brief at 27, 36-37, 40, CADC No. 24-1004. Instead, the Opinion twists the LPPA into knots, ignoring basic statutory interpretive rules, for the improper purpose of protecting NAB’s Full Power clients, the entities the LPPA seeks to constrain. Opinion, Pet. App. 6a.

NAB’s third-party injury claim that potential Full Power improvements might be blocked by full LPPA implementation is doubly speculative on its face. Moreover, the Opinion ignored the real world fact that nobody objected to RCC’s provisional LPPA protective application on any grounds, expansion-related, must-carry-related, or otherwise. Petitioner’s Third Request For Judicial Notice [2118378] at 2-3, filed May 31, 2025, CADC No. 24-1004.

The lower court endorsed the FCC’s policy choice declining to protect LPTV licenses on a nationwide basis based upon the FCC’s literal transcription of NAB’s anti-competitive goal into law.¹⁰ Rather than effectuate explicit

⁹ RCC’s Reply at 25, CADC No. 24-1004, states that RCC Brief at 27 argues that the Commission’s LPPA reading is “absurd,” “irrational,” and “nonsensical” because that non-nationwide [LPPA] reading is prompted by the [FCC’s] improper purpose of protecting NAB’s Clients.

The central problem with the lower court’s decision is that it condoned the FCC’s appellate representation of a trade association’s speculative third-party injury claim that the trade association, and its clients, would lack standing to pursue in their own right. The Opinion does not devote a single word to this central issue.

¹⁰ Neither the lower court nor the FCC explained how nationwide LPPA protection denial constituted a “balanced approach” or served
(continued...)

Congressional purpose “to provide low power TV stations with a limited window of opportunity to apply for the opportunity to be accorded primary status as Class A television licensees,” LPPA Section 2(b), Pet. App. at 123a, the FCC adopted LPPA protection denial rules dictated by a lobbyist who objected to the existence of the LPPA itself. RCC Main Brief at 12, CADC No. 24-1004.

The FCC’s regulatory scheme is explicitly premised upon speculative third-party injury claims that NAB and its clients would lack standing to defend/prosecute in federal court.¹¹ The Opinion utterly fails to explain how the FCC properly serves as NAB’s proxy in federal court for NAB’s anti-competitive speculative third-party injury claims.

The LPPA is a simple, two page statute with no hidden, hard-to-find or easy-to-miss provisions. The Opinion does not point to a single word in the LPPA which gives the FCC discretion to value potential Full Power TV expansion plans over “Low Power Protection.” The lower court ignored the fact that more than forty years ago the FCC determined that the process of Full Power expansion had concluded and the time to develop small market LPTV in urban areas had arrived. *Report and Order, In the Matter of The Suburban Community Policy, the Berwick Doctrine, and the De Facto Reallocation Policy (De Facto Reallocation)*, 93 F.C.C.2d 436, 452 n.29 (1983)

¹⁰(...continued)

a national purpose or affected interstate commerce in any manner.

¹¹ The lobbyist failed to meet the FCC’s associational standing rules which prohibit associational representation. RCC Main Brief at 12, 27, 37, 40-41, RCC Reply at 1-3, and Def. Apdx. 00076-77, CADC No. 24-1004.

citing Inquiry Into The Future Role of Low-Power Television Broadcasting, 45 Fed. Reg. 69178, 69179 (Oct. 17, 1980).¹²

The “balance” Congress plainly struck in the LPPA is that Low Power TV stations must be protected while neither the NAB nor its Full Power clients are even referenced, much less made the LPPA’s primary, nationwide protection concern. Nevertheless, FCC 23-112 ¶ 38, Pet. App. at 77a-78a and the Opinion promote NAB’s anti-competitive lobbying position, and protect NAB’s unverified suzerain, as if NAB’s non-textual talking point were somehow the LPPA’s primary purpose.

Even though the FCC’s literal adoption of NAB’s anti-competitive lobbying was front and center of RCC’s litigation below, neither the Opinion nor FCC’s Brief below even references NAB, as if NAB were a name which must not be spoken. Nor do they discuss the fact that FCC 23-112 explicitly adopted NAB’s anti-competitive purpose, elevating it to the status of federal law. FCC 23-112 ¶ 38, Pet. App. at 77a-78a.¹³ NAB and its speculative third-party injury allegation are the targets of the FCC’s protective regulation. Therefore NAB’s standing to assert an injury claim, and the lower court’s ability to redress that

¹² RCC Main Brief at viii, 4-5, 14, 19-20, 32, 38-41, CADC No. 24-1004. Opinion, Pet. App. at 2a, uses ellipses to ignore the critical words “under a system of dividing television broadcast station licensees into local markets” from the DMA definition found at LPPA Section 2(a)(2)(B). That deleted text serves as a basis for RCC’s statutory argument, but the lower court inexplicably found that statutory text unimportant.

¹³ *See, e.g.*, RCC Main Brief at 10-11, 13, 20-21, 36-37, 53, CADC No. 24-1004.

speculative third-party injury claim, must be examined. *Diamond Alt. Energy*, 145 S. Ct. at 2135, 2142.

RCC invited NAB, in writing, to participate in the lower court review proceeding. However, NAB failed to appear, expressing no overt interest in the remedy it received from the FCC. FCC 23-112 ¶ 38, Pet. App. at 77a-78a. Despite NAB's default, the lower court endorsed the FCC's improper remedy without comment. Federal courts must examine bystander standing when the bystander asserts a claim which is redressed by the agency. *Diamond Alt. Energy*, 145 S. Ct. at 2135, 2142. The lower court utterly failed to address NAB's standing to assert a speculative third-party injury claim, an assertion which caused the FCC to alter the large market DMA definition and "decline to read the LPPA as promoting maximum elevation of LPTV stations to primary status." FCC 23-112 ¶ 38, Pet. App. at 77a-78a. This Court's intervention is warranted.

C. Failure To Follow Supreme Court Direction

1. Review Cannot Ignore Related Statute

The lower court plainly erred in at least two ways when it inferred that because the LPPA does not specifically reference long-existing Section 307(b), Pet. App. 127a, RCC could not use that statutory provision to construe the LPPA. Pet. App. 11a-12a, 14a. First, prior enacted statutes continue in force until Congress explicitly repeals or amends them. *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (there is a "stron[g] presum[ption] that repeals by implication are disfavored and that Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute.") (Internal quotes omitted).

The Opinion fails to point to anything in the LPPA which explicitly provides, or even remotely suggests, that Congress intended to eliminate Section 307(b)'s nationwide licensing mandate, or Section 307(a)'s "public interest" mandate, to favor and elevate bystander Full Power broadcasters' speculative future expansion concerns above the LPPA's explicit LPTV license protection purpose. The Opinion does not even reference, much less discuss, the FCC's explicit justification for its extremely narrow, non-nationwide LPPA interpretation: protecting the anti-competitive policy desire of an association of concentrated media owners the LPPA was enacted to constrain. FCC 23-112 ¶ 38, Pet. App. at 77a-78a. Nor does the lower court discuss the fact that the FCC enshrined a lobbyist's third-party speculative injury claim into law and then prosecuted that speculative injury claim in federal court in violation of Article III standing requirements.

Second, the lower court added the entirety of FCA's Title III broadcast regulation to support its finding that its limited non-nationwide LPPA reading has a substantial economic impact. Opinion, Pet. App. 18a. The lower court does not explain its pick-and-choose standard for adding the whole of the FCA's Title III broadcast regulation to FCC 23-112's nationwide LPPA protection denial to support a finding of substantial interstate commerce, while dismissing RCC's Section 307-based arguments merely because the LPPA does not specifically reference Section 307. Opinion, Pet. App. 11a-12a, 14a. The Opinion inexplicably ignores the fact that FCC 23-112's ordering clauses relied upon Section 307 as supporting legal authority. Pet. App. 98a, 102a; RCC Main Brief at 38-40 & n.16, CADC No. 24-1004. The lower court's view that the LPPA is a stand-alone statute for purposes of

discounting RCC's DMA definitional arguments, ignores its own recognition that the LPPA and the FCA are "related statutes." Opinion, Pet. App. 2a. With all due respect, that is inconsistent adjudication.

Even if the LPPA were a stand-alone statute, RCC's preferred LPPA reading is a more straight forward reading compared to the lower court's statutory vivisection. Section 2(c)(2)(B)(iii), Pet. App. 124a-125a, consists of "two adverbial prepositional phrases [which] describe where and how the subject LPTV station operates." RCC's LPTV station operates in a DMA and RCC's Low Power station serves fewer than 95,000 television households in both the small local DMA market of Allington, CT and the large market DMA. LPTV licenses serving communities of fewer than 95,000 TV households exist from coast to coast, including urban areas. RCC Reply at 20-22, CADC No. 24-1004.

Licensing LPTV stations to serve small communities in spectrum congested urban areas is the reason the FCC created LPTV and changed its licensing rules more than 40 years ago. *See* pp. 18-19, *supra*. The LPPA does not authorize the lower court to rewrite the LPPA, or to infer nationwide protection denial, to harm nominally protected LPTV licensees, like RCC, for the purpose of protecting a trade association which is a mere bystander without standing. This Court's intervention is warranted.

2. Commerce Clause Issue Is Avoidable

Declaring of an Act of Congress unconstitutional is "the gravest and most delicate duty" that courts are called on to perform. *Blodgett v. Holden*, 275 U.S. 142, 148 (1927). That is exactly why RCC developed two procedural off ramps and two LPPA interpretations

involving nationwide small local market DMAs: to avoid the constitutional question of whether nationwide LPPA protection denial substantially affects interstate commerce. RCC Main Brief at 32-33, 35, 36, 45, CADC No. 24-1004, *citing Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) (“where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress”). RCC’s effort to protect LPTV licenses is harmonious with the LPPA.

a. RCC offered the lower court four ways to avoid the commerce clause issue: by ruling on RCC’s “beyond the scope” argument that harming LPTV licensees to benefit NAB’s clients is beyond the scope of a rulemaking proceeding instituted under the LPPA which was enacted to protect LPTV while constraining NAB’s clients; by applying a standing analysis to NAB’s speculative third-party injury claim which is at the heart of FCC 23-112, FCC 23-112 ¶ 38, Pet. App. at 77a-78a; or by choosing one of two statutory readings based upon Section 307(b). RCC Main Brief at 12, 37 *citing* FCC 23-112 at 5 n.28, Pet. App. 34a-35a; RCC Reply at 1-3, CADC No. 24-1004. However, the Opinion ignored the issue of whether searching for ways to harm LPTV licensees to benefit NAB’s clients is a legitimate rulemaking objective under the LPPA, ignored NAB’s standing problem, and negated both local markets approaches RCC offered by determining that small local DMA markets cannot exist under the LPPA, Opinion, Pet. App. 7a-8a, 13a, 15a-16a, despite the plain text of LPPA Section 2(a)(2)(B) which explicitly defines DMAs as including “local markets.” Pet. App.

123a. With all due respect, proper review does not ignore evidence of improper rulemaking, especially when evidenced by the agency's own words, without any comment whatsoever.

Instead, the lower court chose the FCC's large market DMA rule which inherently implicates a commerce clause issue because the FCC's approach denies LPPA protection on a nationwide basis. Opinion, Pet. App. 18a, blames RCC for raising the LPPA's constitutionality, but RCC's argument had absolutely nothing to do with the lower court's need to reach the constitutional issue. The lower court reached the commerce clause issue of its own volition "because the statute and the agency's interpretation are effectively indistinguishable . . ." *Id.*¹⁴

b. Opinion, Pet. App. 18a, states that "Congress is acting to regulate the interstate broadcast market more broadly, not just local activity." That is exactly what RCC has argued for the past two-plus years, but that is not the determination the Opinion actually delivered regarding the LPPA. The central issue presented is whether the Opinion presents the LPPA's "best reading" as being a Congressional standstill order which maintains the status quo, denies LPPA protection nationwide, and has no substantial effect upon interstate commerce. Congress could have achieved those ends without enacting the LPPA in the first place. The lower court's statutory construction elevated a trade association's speculative third-party injury claim for the purpose of protecting a

¹⁴ *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984) was overruled and determining whether FCC 23-112 is permissible under, or "indistinguishable" from, the LPPA was not the objective of the lower court review proceeding, the objective was to find the LPPA's "best reading." *Loper Bright*, 603 U.S. at 400.

group of Full Power broadcasters the LPPA seeks to constrain. Opinion, Pet. App. 6a.

RCC plainly argued that the LPPA's broadcast protection cannot be limited to "deserts, rivers, lakes, mountains, prairie grasslands, literally authorizing Class A service to everywhere, except those places where people are located." RCC Brief at 14, 32, CADC No. 24-1004. "The FCA exists to provide broadcast services to communities of people, not licensing broadcast services to vast, unpopulated swatches of beautiful, natural vistas." *Id. citing* 47 U.S.C. § 307(a),(b), Pet. App. 127a. Prairie dogs, grass, cactus, sagebrush, sand, *etc.*, are not economic entities contributing to the GDP.

At oral argument undersigned counsel was asked directly by the panel: "You don't raise a facial constitutional challenge to the statute?" To which undersigned counsel responded: "Not on that basis, no. Our reading of the statute is constitutional. We're using the Commission's current licensing scheme to make nationwide licensing. The Commission wants to do, for the first time, non-nationwide licensing." The lower court needed to reach the LPPA's constitutionality *only* "if FCC 23-112's LPPA reading were the only one possible, then the LPPA would be facially unconstitutional for having an insubstantial effect upon interstate commerce." RCC Main Brief at 36, CADC No. 24-1004. The LPPA has two DMA definitions and it is literally impossible for there to be just one LPPA interpretation as the lower court determined.

LPPA invalidation does absolutely nothing to advance RCC's interests: RCC is seeking the LPPA's protection, invalidating the LPPA is not even remotely

RCC's objective.¹⁵ The lower court's suggestion that it was RCC who sought to void the LPPA on constitutional grounds does not even rise to the level of being specious – the assertion is facially implausible as a litigation tactic. The lower court's decision to alter statutory definitions and create a constitutional issue, only to close its eyes to the reality that no commerce is generated by nationwide LPPA protection denial, merely to remedy an unaffected bystander trade association's third-party speculative injury claim, FCC 23-112 ¶ 38, Pet. App. at 77a-78a, demonstrates both the importance of this case and the weakness of the lower court's LPPA reading.

The lower court reached the constitutionality of the LPPA because it determined that the “best reading” of the LPPA rewrites statutory definitions, turns the LPPA into a nationwide protection denial statute that has no substantial effect upon interstate commerce, serves no national purpose, and reads the LPPA out of existence as if Congress had codified a federal version of the Dormant Commerce Clause merely to maintain the status quo to direct the FCC “to keep doing nothing.” That cannot possibly be correct, such an act would be titled the “Low Power Prevention Act” not the “Low Power Protection Act.” Neither the lower court nor the FCC answered the obvious question: why would Congress “waste its time for the purpose of affecting such a marginal impact?” FCC 23-112 n.173, Pet. App. 77a (quoting, but not addressing, RCC's rulemaking comment). RCC Main Brief at 26 n.11, CADC No. 24-1004.

¹⁵ The public interest is not served by waiting another generation for Congress to enact a third low power protection action act to try to reign in the FCC's unlawful Full Power TV protectionism.

Opinion, Pet. App. 13a, weakly tries to wring a concession from RCC by stating that:

Section 307(b)'s "community of license" does not provide for an equivalent system, as RCC itself recognizes, and thus was not a viable option for the FCC to adopt. *See* Pet'r's Final Br. 13 (describing Nielsen's DMA as much "larger geographic regions" than section 307(b)'s community of license).

RCC "recognized" no such thing. To the extent that the quoted passage indicates that RCC endorsed, or otherwise accepted, adopted, condoned the FCC's view that "local markets" cannot exist under the LPPA because "local markets" are not "equivalent" to "larger markets," the court's opinion is, with all due respect, very poorly drafted. First, RCC's Main Brief at 13, CADC 24-1004, clearly quotes and criticizes the quoted passage which RCC took from FCC's rulemaking text: RCC did not argue that it should lose this case. Second, the lower court utterly ignored RCC's argument that the two DMA definitions found at LPPA Sections 2(a)(2)(A),(B) were "equivalent" because neither definition contains a population limitation and each definition requires LPPA protection through nationwide markets. *See, e.g.*, RCC Main Brief at 30, 34, 44, CADC No. 24-1004. RCC's approach had the added efficiency benefit that the FCC and LPTV licensees are already familiar with the Section 307(b) community of license licensing scheme. Pet. App. 127a.

c. Opinion, Pet. App. 18a, latches onto the FCC's argument that "a feature of broadcasting is that it crosses state lines, and in approving specific local stations for status upgrades, Congress is acting to regulate the

interstate broadcast market more broadly, not just local activity.” The lower court’s adopted reasoning suffers from three defects.

First, the lower court followed the FCC’s lead and completely ignored RCC’s argument that LPPA eligible LPTV stations already exist in the frequency environment having already cleared the FCC’s interference screen and interstate signals are not an issue in Class A upgrade licensing. The LPTV license upgrade modification merely requires typing a new “Class A” station class on the superseded LPTV class license, no change to the electromagnetic spectrum is required to obtain Class A protection status. RCC Main Brief at 29 n.13, 40-41.

The lower court ignored the fact that of the handful of Class A upgrade applications which were filed out of 1,889 potential upgrade applicants, the FCC approved upgrade applications containing insubstantial, single sentence assertions of non-interference unsupported by electrical engineering studies. RCC’s February 22, 2025 Rule 28(j) Letter [2102165], CADC No. 24-1004. The lower court ignored FCC 23-112 ¶ 46, Pet. App. 88a-89a, which prohibits LPPA protection applicants from modifying their transmission systems in conjunction with Class A upgrades to avoid frequency/engineering issues. The FCC’s Class A denial process has nothing to do with interstate signal regulation and does not support a finding of substantial interstate commerce.

Second, Congress did not “approve specific local stations for status upgrades,” Congress stated its protection purpose generally, “to provide low power TV stations with a limited window of opportunity to apply for” upgrades, without pointing to “specific local stations.” LPPA Section (2)(b), Pet. App. 123a. The LPPA does not designate any

“specific local stations” for inclusion in, or exclusion from, LPPA protection.

Third, the Opinion reads the LPPA very narrowly, endorsing the FCC’s express purpose of protecting NAB’s clients from speculative harm. FCC 23-112 ¶ 38, Pet. App. at 77a-78a. The lower court construed the LPPA as doing nothing on a nationwide basis, that is the exact the opposite of Congress, in the words of the Opinion, “acting to regulate the interstate broadcast market more broadly.” This Court’s intervention is warranted.

3. Improper Statutory Definition Alterations Provoke Commerce Clause Issue

a. LPPA Section 2(a)(2), Pet. App. 122a-123a, defines “Designated Market Area” (“DMA”) in two ways:

(A) a Designated Market Area determined by Nielsen Media Research; or

(B) a Designated Market Area under a system of dividing television broadcast station licensees into local markets using a system that the Commission determines is equivalent to the system established by Nielsen Media Research.

Neither the “large market DMA” nor the “small local market DMA” definition requires using the smallest number of markets which could possibly exist in a regulatory scheme;¹⁶ contains any geographic size or

¹⁶ For ease of reference, the 210 Nielsen defined DMAs are referred to herein as “large market DMAs.” Opinion, Pet. App. 8a, explaining that Nielsen DMAs “define[] larger geographic regions than community of license.” The “local market” DMAs are referred to herein as “small local market DMAs” because “the LPPA concerns
(continued...) ”

population limitation; overrides the nearly century-old nationwide licensing mandate found at 47 U.S.C. § 307, Pet. App. 127a; nor indicates that Congress intended something less than nationwide application of the LPPA. Therefore, LPPA defined DMAs are nationwide in scope whether defined as Section (a)(2)(A) “large market DMAs” or as Section (a)(2)(B) “small local market DMAs.” RCC Main Brief at 30 & n.14, 33-34, CADC No. 24-1004.

b. The lower court erred by literally reading the LPPA from back to front, improperly severing the “95,000 television household limit” found in the LPPA’s LPTV licensee qualification clause at Section 2(c)(2)(B)(iii), Pet. App. 125a, and grafting it onto the earlier occurring “virtually conclusive” DMA large market definition. LPPA Section 2(a)(2)(A). Pet. App. 122a-123a. The lower court then used its definitional alteration to infer that Congress intended non-nationwide Low Power TV protection under the “Low Power Protection Act.” However, the interpretive presumption is that when Congress acts “the application of federal legislation is nationwide.” *Jerome v. United States*, 318 U.S. 101, 104 (1943). The LPPA’s explicitly stated statutory purpose “is to provide low power TV stations with a limited window of opportunity to apply for the opportunity to be accorded primary status as Class A television licensees,” nothing in the LPPA suggests that its purpose is nationwide Low Power protection denial. LPPA Section 2(b), Pet. App. 123a.

Like a Frankenstein’s monster, the Opinion treats the LPPA’s 95,000 TV household licensee qualification

¹⁶(...continued)

LPTV stations that service small areas with low populations.” Opinion, Pet. App. 17a.

clause at Section 2(c)(2)(B)(iii), Pet. App. 125a, as if it were “a disconnected appendage of the ‘Designated Market Area’ definition found at Section 2(a)(2)” to be reassembled into a legislative abomination. RCC Main Brief at 30, 34, No. 24-1004. However, “had Congress intended that reading, it would have written the statutory definition to reflect that.” RCC Reply at 22, CADC No. 24-1004. *See Sturgeon v. Frost*, 587 U.S. 28, 57 (2019) (statutory definitions are “virtually conclusive” absent some “exceptional reason”); *Meese v Keene*, 481 US 465, 484-485 (1987) (“It is axiomatic that the statutory definition of the term excludes unstated meanings of that term”); *Colautti v Franklin*, 439 U.S. 379, 392-393 n.10 (1979) (“As a rule, a definition which declares what a term means . . . excludes any meaning that is not stated”) (internal quotes omitted); RCC Reply at 22, No. 24-1004, *citing Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 967 (CA11 2016) (“It is very rare that a defined meaning can be replaced with another permissible meaning of the word on the basis of other textual indications; the definition is virtually conclusive.”) (internal quote omitted).

Opinion, Pet. App. 13a, cites the lower court’s own recently decided case holding that statutory definitions are “virtually conclusive,” *Rawat v. Comm’r*, 108 F.4th 891, 895 (CADC 2024), but failed to apply that holding to this case and failed to provide any reason, “exceptional” or otherwise, for altering the LPPA’s “virtually conclusive” DMA definition. Despite the existence of two explicitly worded, unlimited, nationwide DMA definitions, the Opinion takes the extraordinary step of creating a statutory definition for the non-statutory purpose of rendering the LPPA non-nationwide in scope to protect NAB’s speculative interests.

c. The Opinion errs stating that “how the Commission defines a station’s DMA for the purpose of Class A eligibility does not affect the station’s area of licensing or otherwise alter its LPTV license.” Pet. App. at 15a. First, it is not the FCC’s function to “define[] a station’s DMA,” the LPPA’s two DMA definitions are “virtually conclusive,” do not contain population limitations, and there was nothing for the FCC to define. LPPA Section 2(a)(2)(A),(B), Pet. App. 122a-123a. Improper definitional alteration was a central issue below, but the Opinion ignores this Court’s interpretive rule that statutory definitions are “virtually conclusive” absent some “exceptional reason.” *Sturgeon v. Frost*, 587 U.S. at 57.

Second, the explicit “purpose” of the LPPA is to affect and alter Low Power licenses, that is, altering LPTV licenses to provide them with LPPA protection. The lower court’s focus on nationwide Low Power protection denial as the overriding statutory purpose underlying the “Low Power Protection Act,” rather than modifying LPTV licenses to provide them with protection, is plainly contrary to the LPPA’s explicitly defined nationwide protection purpose.

d. The Opinion improperly reads the “local markets” DMA definition out of existence merely because “local markets” are not sized like Nielsen’s “much larger geographic region” DMAs. Pet. App. 13a (internal quote omitted). The LPPA’s DMA definitions do not require that “equivalence” is only based upon congruent “size” as the Opinion determined. The question is whether small local market DMAs are “equivalent” to large market DMAs based upon some objective metric. Clearly small local market DMAs can differ in size from larger market DMAs

because Congress included definitions for both market sizes in the LPPA.

The lower court’s LPPA construction reads the small local market DMA definition and the large market DMA definition as if they were the same thing, improperly rendering superfluous the LPPA’s Section 2(a)(2)(B) small local market DMA definition. Pet. App. 123a. *See Pulsifer v. United States*, 601 U.S. 124, 143 (2024) (“the canon against surplusage applies with special force” when a subparagraph is rendered meaningless”); *TRW Inc.*, 534 U.S. at 31; RCC Reply at 20-25, CADC No. 24-1004.

The lower court found RCC’s statutory discussion “convoluted,” Pet. App. 11a, but generally failed to discuss RCC’s two approaches to LPPA interpretation, each of which read the LPPA as protecting Low Power TV nationwide in small local market DMAs based upon Section 307(b) communities of license. Pet. App. 127a. RCC’s preferred interpretation leaves the DMA definitions untouched because they define nationwide DMA markets and the definitions are “virtually conclusive.”

Turning to the very last clause of the LPPA’s licensee qualification section, LPPA Section 2(c)(2)(B)(iii), Pet. App. 124a-125a, provides that:

The Commission may approve an application submitted under subparagraph (A) if the low power TV station submitting the application . . . operates [1] in a Designated Market Area [2] with not more than 95,000 television households.

Section 2(c)(2)(B)(iii) consists of “two adverbial prepositional phrases [which] describe where and how the subject LPTV station operates.” RCC’s LPTV station operates in a DMA and RCC’s Low Power station serves

fewer than 95,000 television households in the Section 307(b) community of license it serves. RCC Reply at 20-22, CADC No. 24-1004.

RCC's statutory construction leaves the DMA definitions intact, leaves the licensee qualification section intact, and has only two steps, including an English grammar refresher. RCC's statutory construction is not "convoluted," but is easily understood and it maintains the LPPA's nationwide function as a "Low Power Protection Act." Moreover, every eligible "low power TV station submitting the application" was initially licensed under Section 307(b). Section 307(b) provides an existing, nationwide system of "local markets" under which every broadcast station has been licensed for more than 90 years. *See* RCC Main Brief at 30, 34, 44, and RCC Reply at 20-23, CADC No. 24-1004.

The lower court's construction, on the other hand, strips a clause from the licensee qualification section, selectively appends that textual alteration to the "virtually conclusive" large market DMA definition, but not to the small local market DMA definition, and transforms the extracted LPTV licensee qualifier into a DMA market-size qualifier. With all due respect, it is the appeals court's statutory construction that is a "convoluted," unnatural LPPA reading.

If it were necessary to augment the LPPA Section 2(a)(2) DMA definitions, Pet. App. 123a, with the TV household limit taken from the licensee qualification section, the lower court should have modified the LPPA's Section 2(a)(2)(B) small local market DMA definition in the same manner as the lower court modified the large market DMA definition, using the Section 307(b), Pet. App. 127a, community of license as the small local market

DMA boundaries. RCC's small local DMA markets LPPA reading applies nationwide and substantially affects interstate commerce by promoting nationwide broadcast investments and deconcentrates media across the nation. The lower court's statutory construction, on the other hand, applies the LPPA in a non-nationwide manner, limits broadcast investment, concentrates media, and creates dangerous information bubbles via nationwide LPPA protection denial. RCC Main Brief at 8 n.5, 9, 41 and RCC Reply at 9-10, CAD No. 24-1004. This Court's intervention is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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SEPTEMBER 2025

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**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT, DECIDED JUNE 27, 2025**

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-1004

RADIO COMMUNICATIONS CORPORATION,

PETITIONER,

v.

FEDERAL COMMUNICATIONS COMMISSION
AND UNITED STATES OF AMERICA,

RESPONDENTS.

Argued November 18, 2024

Decided June 27, 2025

On Petition for Review of an Order of the
Federal Communications Commission

Before: KATSAS and CHILDS, *Circuit Judges*, and
EDWARDS, *Senior Circuit Judge*.

Opinion for the Court filed by *Senior Circuit Judge*
EDWARDS.

EDWARDS, *Senior Circuit Judge*: Radio Communications Corporation (“RCC”), a telecommunications and media company, petitions for review of a final order issued by the Federal Communications Commission (“FCC” or the

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“Commission”) implementing the Low Power Protection Act (“LPPA”), Pub. L. No. 117-344, 136 Stat. 6193 (2023). The LPPA provides low power television (“LPTV”) stations with an opportunity to apply for an upgrade to a Class A license if they meet certain criteria. *See* LPPA § 2. To be eligible, a LPTV station must “operate[] in a Designated Market Area with not more than 95,000 television households.” *Id.* § 2(c)(2)(B)(iii). A Designated Market Area (“DMA”) means either “(A) a Designated Market Area determined by Nielsen Media Research or any successor entity; or (B) a Designated Market Area . . . using a system that the Commission determines is equivalent to the system established by Nielsen Media Research.” *Id.* § 2(a)(2). Pursuant to the LPPA, the FCC issued an Order which, *inter alia*, adopted the statute’s “95,000 television households” limitation for a DMA and confirmed that the Commission would use Nielsen’s Local TV Report — a collection of data on local television markets — to determine a station’s DMA. *In the Matter of Implementation of the Low Power Protection Act*, 38 FCC Rcd. 12627 (2023) (“Order”).

Petitioner RCC operates a LPTV station, W24EZ-D, in Connecticut. On January 10, 2024, RCC challenged the Order as unlawful. RCC’s primary argument focuses on the LPPA’s size limitation for Class A license eligibility, *i.e.*, the station must operate in a DMA with not more than 95,000 television households. RCC argues that the size limitation applies to a station’s “community of license,” not its DMA. A station’s “community of license” is the community that the station is licensed to serve under section 307(b) of the Communications Act of 1934, 47 U.S.C. § 151 *et seq.*, a separate but related statute. RCC’s

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station, for example, is licensed to serve Allingtown, a neighborhood of West Haven, Connecticut, which has fewer than 15,000 television households. However, RCC's station is a part of the Hartford-New Haven DMA which has approximately one million television households. Thus, under RCC's reading of the LPPA, its station satisfies the LPPA's size requirement, whereas under the Order, it does not.

RCC also raises a host of other statutory and constitutional arguments. It maintains that the Order contravenes section 307(b) of the Communications Act which, RCC contends, mandates nationwide Class A licensing. RCC also claims that the Order is unconstitutional because it (1) impermissibly regulates local economic activity in violation of the Commerce Clause; (2) impermissibly delegates legislative authority to a private party, Nielsen; and (3) impermissibly restricts a Class A license applicant's programming content as part of its requirements for Class A eligibility in violation of the First Amendment. Lastly, RCC argues that the Order is unlawful because it does not extend "must carry rights" - the requirement that cable systems carry certain television stations — to Class A licensees.

We are unpersuaded by RCC's arguments. The FCC's Order adheres to the best reading of the statute: A LPTV station must operate in a DMA with not more than 95,000 television stations to be eligible for a Class A license. The agency properly defined DMA according to Nielsen's data, as expressly authorized by Congress. Nowhere in the statute does Congress reference "community of license," nor are communities of license equivalent systems to

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DMA's such that they can be adopted for determining Class A eligibility. *See* LPPA § 2(a)(2). Rather, the two metrics serve distinct purposes — a “community of license” determines area of license and a DMA determines area of Class A eligibility. Thus, by the terms of the statute, and as implemented by the Order, RCC’s station is not eligible for Class A status because it operates in a DMA — the Hartford-New Haven DMA — with more than 95,000 television households. This reading of the statute is consistent with section 307(b) of the Communications Act, and it runs afoul of neither the commerce clause nor the nondelegation doctrine.

Finally, because RCC is ineligible for a Class A license based on the DMA size requirement, we need not consider RCC’s separate argument regarding the constitutionality of the FCC’s local programming requirements, nor RCC’s argument that the FCC improperly denied must carry rights to Class A licensees. A favorable holding on either issue would not render RCC’s station eligible for a Class A license.

Accordingly, we deny RCC’s petition for review.

I. Background**A. Statutory Background**

The FCC is governed by the Communications Act of 1934. *See* 47 U.S.C. § 151 *et seq.* The Act endows the Commission with broad licensing and regulatory authority, and its purpose is to provide “a unified and comprehensive

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regulatory system for the [broadcasting] industry.” *FCC v. Pottsville Broad. Co.*, 309 U.S. 134, 137, 60 S. Ct. 437, 84 L. Ed. 656 (1940). As relevant here, section 307(b) of the Act provides, in pertinent part:

In considering applications for licenses . . . when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

47 U.S.C. § 307(b).

As may be seen, this provision generally directs the FCC to distribute broadcast resources in a fair, efficient, and equitable manner. *See, e.g., New Radio Corp. v. FCC*, 804 F.2d 756, 757, 256 U.S. App. D.C. 211 (D.C. Cir. 1986) (“[W]here two or more mutually exclusive applicants have specified different communities of license, the FCC must determine the relative need [of] each applicant’s proposed service area.”). As relevant here, this provision relies on a concept, “community of license,” which refers to “the community that [a] station is licensed to serve” under the statute. *ADX Commc’ns of Pensacola v. FCC*, 794 F.3d 74, 77, 417 U.S. App. D.C. 232 (D.C. Cir. 2015).

In 1982, the FCC began licensing LPTV stations to expand service in unserved and underserved areas. *See* Order, 38 FCC Rcd. at 12628 ¶ 2. Whereas full power

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television stations provide service to viewers located in larger service areas, LPTV stations broadcast service at a low transmitter power output and provide television service to viewers in smaller geographic areas. Because they operate at reduced power levels, LPTV stations can be fit into areas where a higher power station cannot be accommodated. *See id.* at 12628 ¶ 3.

From its inception, low power television service has been restricted to secondary priority, meaning that LPTV stations “may not cause interference to, and must accept interference from, full power television stations.” *Id.* at 12628 ¶ 2. “As a result of their secondary status, LPTV stations can also be displaced by full power stations that seek to expand their service area, or by new full power stations seeking to enter the same area as an LPTV station.” *Id.* at 12628 ¶ 2 n.5.

In the Community Broadcasters Protection Act of 1999, Congress directed the FCC to create a set of Class A television licenses, which protect LPTV stations from the interference of full power stations. *See* Pub. L. No. 106-113, § 5008, 113 Stat. 1501 (1999). To obtain a Class A license under the Community Broadcasters Protection Act, LPTV stations had to meet certain criteria and apply for a license within a set time frame. *See id.*

In January 2023, Congress enacted the LPPA, which like the Community Broadcasters Protection Act before it, provides LPTV stations with an opportunity to apply for Class A licenses if they meet certain eligibility criteria. *See* LPPA § 2(c)(2)(B). As relevant here, the LPPA authorizes

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the Commission to approve Class A license applications only from LPTV stations that, “as of the date of enactment of [the LPPA], operate[] in a Designated Market Area with not more than 95,000 television households.” *Id.* § 2(c)(2) (B)(iii). The LPPA states that a “Designated Market Area” means either “(A) a Designated Market Area determined by Nielsen Media Research or any successor entity; or (B) a Designated Market Area under a system of dividing television broadcast station licensees into local markets using a system that the Commission determines is equivalent to the system established by Nielsen Media Research.” *Id.* § 2(a)(2). Eligible LPTV stations must apply for a Class A license within a year of the date when the FCC’s rule implementing the LPPA becomes effective. *Id.* § 2(c)(2)(A).

B. Factual and Procedural History

On December 12, 2023, the FCC issued the Order, which implements the LPPA by, *inter alia*, setting the specific criteria pursuant to which LPTV stations qualify for Class A licenses. As relevant here, the Order adopted the language of the 95,000-size limitation verbatim. Order, 38 FCC Rcd. at 12643-44 ¶¶ 33-34, 12647 ¶ 38. It also provides that the FCC will use Nielsen’s Local TV Report — a collection of data on local television markets — to determine a station’s DMA. *Id.* at 12644 ¶ 35. In choosing to use Nielsen’s data to determine a LPTV station’s DMA, the FCC reasoned in the Order that this approach was fully consistent with the LPPA which contemplates the use of Nielsen. *Id.* The FCC also reasoned that RCC’s proposed alternative — the community of license system — was

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not “equivalent” to the system established by Nielsen, which defines larger geographic regions than community of license, and thus would contravene the statute’s plain command to use Nielsen DMAs or an equivalent system. *Id.* at 12648-49 ¶ 40 (quoting LPPA § 2(a)(2)(B)). The Order also requires that Class A license applicants carry a certain amount of “locally produced programming” in the ninety days preceding the statute’s effective date to be eligible for the Class A status upgrade. *See* Order, 38 FCC Rcd. at 12635 ¶¶ 18-19; LPPA § 2(c)(2)(B)(i)(I).

The choice between a DMA and a community of license for determining eligibility makes a difference for RCC’s station, W24EZ-D. RCC’s station is licensed to serve Allington, a neighborhood of West Haven, Connecticut, which has fewer than 15,000 television households. However, RCC’s station is part of the Hartford-New Haven DMA which has approximately one million television households, far exceeding the 95,000-households statutory limit. Thus, under the FCC’s reading of the LPPA, RCC’s station is ineligible for a Class A license.

RCC submitted comments during the FCC’s rulemaking proceedings opposing parts of the FCC’s proposed rule, which were ultimately adopted in the Order. For instance, RCC argued that determining Class A license eligibility based on Nielsen’s data was “nonsensical” because 177 out of the 210 DMAs in Nielsen’s Local TV Report had more than 95,000 television households; thus, most LPTV stations in the country would not qualify for Class A licenses. *See* Order, 38 FCC Rcd. at 12647 ¶ 38. In rejecting RCC’s argument that using

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Nielsen’s data unduly restricted the number of LPTV stations that would qualify for Class A licenses, the FCC stated in the Order that “Congress clearly intended that eligibility under the LPPA be limited, as the Act expressly provides that eligibility is limited to DMAs with no more than 95,000 TV households.” *Id.* FCC maintains that its rule is consistent with Congress’s instructions, as set out in the LPPA.

On January 10, 2024, RCC filed a timely petition for review of the Order. *See* 47 U.S.C. § 402(c).

II. Analysis**A. Standard of Review**

Under the Administrative Procedure Act (“APA”), we will hold unlawful and set aside final agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). In determining whether an agency’s interpretation of its governing statute is contrary to law, we must exercise our “independent judgment” and “apply[] all relevant interpretive tools” to reach “the best reading of the statute.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 400, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024). Congress may “confer discretionary authority on agencies . . . subject to constitutional limits.” *Id.* at 404. “[T]o stay out of discretionary policymaking left to the political branches, [reviewing courts] need only fulfill their obligations under the APA to independently identify and respect such delegations of authority, police the outer

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statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA.” *Id.*

B. Standing

To establish Article III standing, a plaintiff must show (1) injury in fact that is concrete and particularized and actual or imminent rather than conjectural or hypothetical, (2) causation fairly traceable to the defendant’s challenged action and (3) redressability by a favorable decision that is likely as opposed to merely speculative. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992).

RCC has Article III standing to challenge the Order’s size limitation for Class A eligibility. RCC is the holder of a LPTV broadcast license which is “directly and adversely affected” by the Commission’s eligibility rules as set out in the Order. *Viasat, Inc. v. FCC*, 47 F.4th 769, 781, 459 U.S. App. D.C. 49 (D.C. Cir. 2022) (internal quotation marks and citation omitted). Specifically, FCC’s interpretation and implementation of LPPA section 2(c)(2)(B)(iii) renders RCC ineligible to receive a Class A license upgrade. Such an upgrade comes with substantial economic benefits, including protection from the interference of full power stations. The Order’s denial of these economic benefits to RCC by the terms of its rules can be remedied by a favorable ruling from this court regarding the legality of the Order.

*Appendix A***C. Class A License Eligibility**

The LPPA’s plain text is clear. It sets specific eligibility criteria for LPTV stations seeking Class A status: “The Commission may approve an application . . . if the low power TV station submitting the application . . . satisfies” the listed requirements, including that, at the time of enactment, it “operates in a Designated Market Area with not more than 95,000 television households.” LPPA § 2(c)(2)(B). RCC’s station operates in a Designated Market Area — the Hartford-New Haven DMA — with more than 95,000 TV households. Thus, by the clear terms of the statute, RCC’s station is ineligible for a Class A license.

Yet, RCC argues that the statute’s limitation of “95,000 television households” refers to a station’s community of license, and not to the number of households in the station’s DMA. In other words, RCC reads the operative text as requiring the eligible LPTV station (1) to “operate in a DMA” of any size and (2) to service a community of license “with not more than 95,000 television households.” Unlike “Designated Market Area,” however, “community of license” appears nowhere in the eligibility requirements or the LPPA. Instead, RCC seeks to import “community of license” from section 307(b) of the Communications Act. RCC’s convoluted reading of these statutory provisions is plainly incorrect.

“As with all questions of statutory interpretation, we start with the text.” *Pharm. Mfg. Rsch. Servs., Inc. v.*

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FDA, 957 F.3d 254, 260, 446 U.S. App. D.C. 362 (D.C. Cir. 2020). The phrase “95,000 television households” modifies the immediately preceding “Designated Market Area,” not the phrase “community of license,” which appears nowhere in the LPPA, nor the phrase “the low power TV station submitting the application,” which appears much earlier in the statute. *See Lockhart v. United States*, 577 U.S. 347, 351, 136 S. Ct. 958, 194 L. Ed. 2d 48 (2016) (“[A] limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows.” (citations omitted)).

RCC’s alternative reading of the statute — pursuant to which “95,000 television households” modifies the community that the station is licensed to serve — would render the Designated Market Area language nearly superfluous. *See Pub. Citizen, Inc. v. Rubber Mfrs. Ass’n*, 533 F.3d 810, 816, 382 U.S. App. D.C. 338 (D.C. Cir. 2008) (explaining that courts should “if possible, . . . construe a statute so as to give effect to every clause and word” (cleaned up)). Every television station located in the lower 48 states falls within one of Nielsen’s DMAs. Thus, under RCC’s reading of the LPPA, the statute’s requirement that a station applying for a Class A license fall within a DMA would serve no purpose. The best reading of the statute, giving effect to every clause and word, is that Class A license eligibility is limited by the size of a station’s DMA.

Moreover, we have no reason to believe that Congress intended for the FCC to adopt an alternative community of license metric, found in a different statute, when it specifically provided and defined, in the operative statute,

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the geographic metric to be used in determining Class A eligibility: “Designated Market Area determined by Nielsen Media Research” or some “equivalent.” LPPA § 2(a)(2); *see also Rawat v. Comm’r*, 108 F.4th 891, 895 (D.C. Cir. 2024) (“Statutory definitions are virtually conclusive of statutory meaning.” (internal quotation marks and citation omitted)). Where Congress did intend to rely on the Communications Act, such as by incorporating some of its requirements, Congress referenced that statute and specific, relevant provisions explicitly. *See* LPPA § 2(c)(2)(B)(i)-(ii). When discussing the size limitation, however, Congress made no mention of the Communications Act, referring only to “Designated Market Area,” which it had defined earlier, instead. *Id.* § 2(c)(2)(B)(iii).

Furthermore, although the LPPA does authorize the agency to adopt an alternative system, that system must be equivalent to the one defined by reference to Nielsen’s data. *See id.* § 2(a)(2)(B). Section 307(b)’s “community of license” does not provide for an equivalent system, as RCC itself recognizes, and thus was not a viable option for the FCC to adopt. *See* Pet’r’s Final Br. 13 (describing Nielsen’s DMA as much “larger geographic regions” than section 307(b)’s community of license); *see also* Order, 38 FCC Rcd. at 12648-49 ¶ 40 (quoting LPPA § 2(a)(2)(B)).

Unable to account for the statute’s plain text, RCC turns to the statute’s purpose. RCC argues that the Commission’s interpretation of the LPPA to restrict Class A licenses to only certain LPTV stations conflicts with the statute’s general purpose, which RCC argues is to protect LPTV stations nationwide. RCC significantly

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overreads the LPPA’s purpose. The LPPA does not provide unbounded protection for LPTV stations. Rather, its purpose is to provide LPTV stations “with a limited window of opportunity to apply for” Class A licenses. LPPA § 2(b). Moreover, by setting out specific eligibility criteria, Congress clearly did not intend for any and all LPTV stations to benefit from the statute — only those that meet the statutory requirements. In any event, even if RCC is correct that a larger purpose of the statute is to expand Class A licensing as broadly as possible across the nation, “the statute’s larger purpose alone does not warrant departing from the [statute’s] text.” *Eagle Pharms., Inc. v. Azar*, 952 F.3d 323, 334, 445 U.S. App. D.C. 447 (D.C. Cir. 2020).

Thus, with no support in the LPPA for its position, RCC turns to the separate but related Communications Act. RCC reads section 307(b) of the Act as mandating nationwide Class A licensing. That provision, however, does not support RCC’s reading. Section 307(b) generally “empowers the Commission to allow licenses so as to provide a fair distribution among communities.” *FCC v. Allentown Broad. Corp.*, 349 U.S. 358, 362, 75 S. Ct. 855, 99 L. Ed. 1147 (1955). It also directs the Commission to evaluate fair distribution of broadcast resources in certain circumstances — for example, “[w]hen multiple applicants seek mutually exclusive licenses to operate a noncommercial educational . . . radio station.” *Mary V. Harris Found. v. FCC*, 776 F.3d 21, 22, 414 U.S. App. D.C. 22 (D.C. Cir. 2015). Section 307(b) does not specifically address LPTV stations, let alone guarantee Class A status to LPTV stations on a nationwide basis. Rather, in

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pursuing section 307(b)'s general aims, the Commission is bound by the express limitations set out in the LPPA: to restrict Class A eligibility by the size of a station's DMA, defined according to Nielsen's data. Nothing in the general language of section 307(b) requires the Commission to override this clear instruction from Congress.

RCC also argues that the Order "effectively reassigns . . . LPTV licenses . . . from their small Section 307(b) communities of license to much larger . . . DMAs." Pet'r's Final Br. 10. This argument is without merit. As the FCC explained, the use of DMAs to determine Class A eligibility is wholly unrelated to the concept of communities of license under section 307(b). *See* Order, 38 FCC Red. at 12649 ¶ 40 n.187 (rejecting RCC's reassignment argument because "[the Commission's] decision . . . relates only to implementation of the LPPA, and does not affect the communities LPTV stations are licensed to serve"). In other words, how the Commission defines a station's DMA for the purpose of Class A eligibility does not affect the station's area of licensing or otherwise alter its LPTV license. The two provisions and the two statutes are distinct.

RCC also challenges the FCC's interpretation of the LPPA as inadequately explained. This claim fails because the interpretation is legally compelled: The challenged provisions of the Order are a direct implementation of the statutory text. Moreover, the Commission explained, by reference to the statute, why it limited Class A eligibility to LPTV stations in DMAs with no more than 95,000 TV households. *See id.* at 12643-44 ¶¶ 33-34. The Commission

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also considered alternative systems for demarcating local markets and found that they raised a variety of issues or were not equivalent to Nielsen's DMAs and, thus, could not be used. *See id.* at 12644-49 ¶¶ 35-40. The Commission's explanation of its decision-making was thus more than adequate.

More generally, RCC suggests that the Commission failed to respond to all of its arguments raised in comments. We disagree. On the record before it, the Commission provided ample substantive reasons for rejecting the principal arguments that RCC raised. *See, e.g., id.* at 12647-49 ¶¶ 38-40. Any "failure to respond to comments is significant only insofar as it demonstrates that the agency's decision was not based on a consideration of the relevant factors." *Thompson v. Clark*, 741 F.2d 401, 409, 239 U.S. App. D.C. 179 (D.C. Cir. 1984) (internal quotation marks and citation omitted). No such concern exists in this case.

With respect to the constitutional issues raised by RCC, those matters have been raised with this court and are addressed in this opinion. *See Loper Bright*, 603 U.S. at 391 (emphasizing that it is the role of "the reviewing court" to "interpret constitutional . . . provisions"); *Oestereich v. Selective Serv. Sys. Local Bd. No. 11*, 393 U.S. 233, 242, 89 S. Ct. 414, 21 L. Ed. 2d 402 (1968) (Harlan, J., concurring in result) ("Adjudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies.").

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Lastly, RCC raises a variety of concerns that ultimately amount to policy disagreements. For example, RCC complains that restricting eligibility based on DMAs would “deny Class A licenses covering more than 98% of the Nation’s population.” Pet’r’s Final Br. 38-39. However, as the agency explained, “while 98 percent of television households may fall outside eligible Designated Market Areas, 33 out of 210 Designated Market Areas fall within the statute’s 95,000 television household threshold.” Br. for Resp’ts 25. The LPPA concerns LPTV stations that service small areas with low populations and, thus, by its terms excludes huge swaths of this nation’s population from its scope. Congress also further limited upgrades under the LPPA to stations in *certain* areas within that universe of small geographic regions, further reducing the number of households affected. To the extent RCC is dissatisfied with this arrangement, its concerns are better levied at Congress, which set out the eligibility requirements, than at the Commission, which faithfully executed them.

D. Constitutional Challenges

RCC argues that the FCC interpreted the LPPA in an unconstitutional manner as (1) regulating local economic activity beyond the scope of the interstate commerce clause and as (2) delegating legislative authority to a private, non-governmental entity, Nielsen. Accordingly, RCC asks this court to adopt its reading of the statute in order to avoid these alleged constitutional issues. We decline to do so because the agency’s reading of the statute

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is entirely consistent with the statute, which raises no such constitutional concerns.

As discussed above, the plain language of the LPPA compels the agency's interpretation. RCC does not separately challenge the LPPA itself as unconstitutional. However, because the statute and the agency's interpretation are effectively indistinguishable, RCC's constitutional challenges are ultimately about the statute and whether its regulatory scheme runs afoul of the commerce clause or nondelegation doctrine. We find that it does not.

First, in enacting the LPPA, Congress acted well within its power to regulate commerce. The Supreme Court "ha[s] long recognized that Congress, acting pursuant to the Commerce Clause, has power to regulate the use of" broadcast communications, including television broadcasting. *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 376, 104 S. Ct. 3106, 82 L. Ed. 2d 278 (1984). A feature of broadcasting is that it crosses state lines, and in approving specific local stations for status upgrades, Congress is acting to regulate the interstate broadcast market more broadly, not just local activity. Moreover, Congress has the power to regulate local activity that, when aggregated with similar activities of others, has a substantial effect on interstate commerce. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 549, 132 S. Ct. 2566, 183 L. Ed. 2d 450 (2012); *United States v. Sullivan*, 451 F.3d 884, 888, 371 U.S. App. D.C. 369 (D.C. Cir. 2006). The local activity at issue in this case belongs to an economic class of activities — television broadcasting

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— that has a substantial effect on interstate commerce, making it wholly within the scope of Congress’s legislative power.

Second, RCC’s argument that the “DMA market structure . . . is unconstitutional” because it “improperly delegates legislative authority to a private, non-governmental entity” is without merit. Pet’r’s Final Br. 42. Neither Congress nor the FCC delegated legislative authority to Nielsen by defining the phrase “Designated Market Area” by reference to that private company’s system of designating television markets. The LPPA and the Order merely refer to and incorporate Nielsen’s data for the limited purpose of determining a Class A license applicant’s DMA at a single moment in time. Our case law suggests that agencies are free to rely on private entities to provide factual information. *See U.S. Telecom Ass’n v. FCC*, 359 F.3d 554, 567, 360 U.S. App. D.C. 202 (D.C. Cir. 2004) (“[A] federal agency may use an outside entity, such as a . . . private contractor, to provide the agency with factual information.”); *see also Am. Soc’y for Testing & Materials v. Public.Resource.Org, Inc.*, 82 F.4th 1262, 1265, 463 U.S. App. D.C. 293 (D.C. Cir. 2023) (recognizing that “agencies may incorporate privately developed standards into law by referencing them in agency rulemaking”). And the Commission has “long relied on Nielsen DMA data to define television markets,” Order, 38 FCC Rcd. at 12644 ¶ 35, in part because Nielsen’s market assignments “provide the most accurate method for determining the areas served by local stations,” *In the Matter of Definition of Markets for Purposes of the Cable Television Mandatory Television*

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Broadcast Signal Carriage Rules, 11 FCC Rcd. 6201, 6220 ¶ 39 (1996). Doing so here at Congress’s direction violated no constitutional principle.

To conclude, we find no daylight between the agency’s Order and the text of the statute. Thus, by challenging the agency’s interpretation of the statute as unconstitutional, RCC is effectively challenging the constitutionality of the statute. We find these challenges to be without merit.

E. Final Considerations

Because RCC is ineligible for a Class A license based on the DMA size requirement, we need not consider RCC’s separate argument regarding the constitutionality of the FCC’s local programming requirements, nor RCC’s argument that the FCC improperly denied must carry rights to Class A licensees.

First, the local programming requirements present a separate and additional hurdle to a Class A license upgrade. RCC’s station has already failed at the first hurdle — the DMA size requirement — and, thus, we have no need to rule on the next hurdle, particularly when it raises a constitutional question. *See Syracuse Peace Council v. FCC*, 867 F.2d 654, 657, 276 U.S. App. D.C. 38 (D.C. Cir. 1989) (“[I]t is an elementary canon that American courts are not to ‘pass upon a constitutional question . . . if there is also present some other ground upon which the case may be disposed of.’” (alteration in original) (citation omitted)); *see also Saga Broad. Corp. v. FCC*, 38 F. App’x 8, 11 (D.C. Cir. 2002) (“[I]f the Maryland

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stations are ineligible for Class A status regardless [of] whether the challenged requirements are vacated, then a decision in [petitioner's] favor will not redress the harm of which he complains.”).

Second, even if we were to require the FCC to extend must carry rights to Class A licensees, RCC's station would be ineligible to receive such rights because it is ineligible for a Class A license. RCC thus lacks standing to bring a challenge to the agency's position on must carry rights.

III. Conclusion

For the foregoing reasons, we deny the petition for review.

So ordered.

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**APPENDIX B — JUDGMENT OF THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT, FILED JUNE 27, 2025**

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-1004
September Term, 2024

RADIO COMMUNICATIONS CORPORATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
AND UNITED STATES OF AMERICA,

Respondents.

FILED ON: JUNE 27, 2025

On Petition for Review of an Order of
the Federal Communications Commission

Before: KATSAS and CHILDS, *Circuit Judges*, and
EDWARDS, *Senior Circuit Judge*

JUDGMENT

This cause came to be heard on the petition for review
of an order of the Federal Communications Commission
and was argued by counsel. On consideration thereof, it is

23a

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ORDERED and **ADJUDGED** that the petition for review be denied, in accordance with the opinion of the court filed herein this date.

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk

Date: June 27, 2025

Opinion for the court filed by Senior Circuit Judge Edwards.

24a

**APPENDIX C — ORDER OF THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT, FILED JUNE 27, 2025**

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-1004
September Term, 2024
FCC-23-112

RADIO COMMUNICATIONS CORPORATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
AND UNITED STATES OF AMERICA,

Respondents.

Filed On: June 27, 2025

BEFORE: Katsas and Childs, Circuit Judges;
Edwards, Senior Circuit Judge

ORDER

Upon consideration of petitioner's motion to strike
FCC's November 22, 2024 response; and petitioner's
motions for judicial notice, it is

25a

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ORDERED that the motions be dismissed as moot in light of the court's opinion issued herein this date.

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

**APPENDIX D — REPORT AND ORDER OF THE
FEDERAL COMMUNICATIONS COMMISSION,
RELEASED DECEMBER 12, 2023**

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

MB Docket No. 23-126

IN THE MATTER OF IMPLEMENTATION
OF THE LOW POWER PROTECTION ACT

REPORT AND ORDER

Adopted: December 11, 2023
Released: December 12, 2023

By the Commission:

[TABLE INTENTIONALLY OMITTED]

I. INTRODUCTION

1. In this *Report and Order*, we adopt rules to implement the Low Power Protection Act (LPPA or Act),¹ which was enacted on January 5, 2023. The LPPA provides certain low power television (LPTV) stations with a limited window of opportunity to apply for primary

1. Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023).

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spectrum use status as Class A television stations.² With limited exceptions, the rules adopted herein are consistent with the Commission’s proposals in the *Notice of Proposed Rulemaking (NPRM)*³ in this proceeding. In this Order, we further the implementation of the LPPA by establishing the period during which eligible stations may file applications for Class A status, eligibility and interference requirements, and the process for submitting applications.

II. BACKGROUND

A. Low Power Television Service

2. The Commission created the LPTV service in 1982 to bring television service, including local service, to viewers “otherwise unserved or underserved” by existing full power service providers.⁴ From its creation,

2. LPPA Sec.2(b).

3. *See Implementation of the Low Power Protection Act*, MB Docket No. 23-126, Notice of Proposed Rulemaking, FCC 23-23 (rel. March 30, 2023) (*NPRM*).

4. *Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, BC Docket No. 78-253, Notice of Proposed Rulemaking, 82 F.C.C.2d 47, para. 1 (1980) (*LPTV NPRM*); *Low Power Television Service*, Report and Order, 51 R.R.2d 476 (1982) (*LPTV Order*), *recon. granted in part*, 48 Fed. Reg. 21478 (1983). The low power television service consists of LPTV and TV translator stations. LPTV and TV translator stations differ only in the amount of programming they may originate. LPTV stations are not limited in the amount of

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the LPTV service has been a secondary service, meaning LPTV stations may not cause interference to, and must accept interference from, full power television stations as well as certain land mobile radio operations and other primary services.⁵

3. Currently, there are 1,889 licensed LPTV stations.⁶ These stations operate in all states and territories, and serve both rural and urban audiences.⁷ LPTV stations were required to complete a transition from analog to digital operation in 2021, and all such stations must

programming they may originate. TV translators may originate only emergency warnings of imminent danger no longer or more frequent than necessary to protect life and property and, in addition, not more than thirty seconds per hour of public service announcements and material seeking and acknowledging financial support necessary to the continued operation of the station. *See* 47 CFR § 74.790 (Permissible service of TV translator and LPTV stations).

5. *LPTV Order*, 51 R.R.2d at para. 17. As a result of their secondary status, LPTV stations can also be displaced by full power stations that seek to expand their service area, or by new full power stations seeking to enter the same area as an LPTV station.

6. *See Broadcast Station Totals as of September 30, 2023*, Public Notice, DA 23-921 (rel. Oct. 3, 2023), available at <https://docs.fcc.gov/public/attachments/DA-23-921A1.pdf> (<http://fcc.gov>).

7. *See Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6357-58, para. 2 (2000) (*Class A Order*), *recon. granted in part*, 16 FCC Rcd 8244 (2001) (*Class A MO&O*).

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now operate in digital format.⁸ As the name suggests, LPTV stations have lower authorized power levels than full power television stations.⁹ Because they operate at reduced power levels, LPTV stations serve a much smaller geographic region than full power stations and can be fit into areas where a higher power station cannot be accommodated in the Table of TV Allotments.¹⁰

B. Class A Television Stations

4. In 2000, the Commission established a Class A television service¹¹ to implement the Community Broadcasters Protection Act of 1999 (CBPA).¹² The CBPA allowed certain qualifying LPTV stations to become

8. LPTV stations were required to complete their digital transition as of July 13, 2021. *See Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771 (MB 2021).

9. *See* 47 CFR §§ 74.735(a), 73.622(a)(1); *Class A Order*, 15 FCC Rcd at 6357, n.4; *NPRM* at n.8 (noting that LPTV signals typically extend approximately 20 to 40 miles from a station's transmission site, while the signals of full power stations can reach as far as 60 to 80 miles).

10. Unlike full power stations, LPTV stations are not restricted to operating on a channel specified in a table of allotments.

11. *See Class A Order*, 15 FCC Rcd 6355.

12. Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594-1501A-598 (1999), *codified at* 47 U.S.C. § 336(f).

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Class A stations, which provided those television stations primary status, and thereby a measure of interference protection from full service television stations.¹³

5. Congress sought in the CBPA to provide certain LPTV stations a limited window of opportunity to apply for primary status. Among other matters, the CBPA set out certain certification and application procedures for LPTV licensees seeking Class A designation and prescribed the criteria for eligibility for a Class A license. Specifically, under the CBPA, an LPTV station could qualify for Class A status if, during the 90 days preceding the date of enactment of the statute, the station: (1) broadcast a minimum of 18 hours per day; (2) broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group; and (3) was in compliance with the Commission's requirements for LPTV stations.¹⁴ In addition, the CBPA required that, from and after the date of its application for a Class A license, the station must be in compliance with the Commission's operating rules for full power television stations.¹⁵ As directed by the CBPA, within 60 days of the date of enactment of the CBPA, stations seeking Class A status were required to submit

13. *See Class A Order*, 15 FCC Rcd 6355, para. 1.

14. 47 U.S.C. § 336(f)(2)(A)(i).

15. 47 U.S.C. § 336(f)(2)(A)(ii).

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to the Commission a certification of eligibility based on the applicable qualification requirements.¹⁶

6. In addition to these qualifying requirements, the CBPA gave the Commission discretion to determine that the public interest, convenience, and necessity would be served by treating a station as a qualifying LPTV station under the CBPA, or that a station should be considered to qualify for such status for other reasons determined by the Commission, even if it did not meet the qualifying requirements in the statute discussed above.¹⁷ In implementing the CBPA, the Commission concluded, however, that it would not accept applications under the CBPA from LPTV stations that did not meet the statutory criteria and that did not file a certification of eligibility by the statutory deadline, absent compelling circumstances.¹⁸

C. Low Power Protection Act

7. Like the CBPA, the LPPA is intended “to provide low power TV stations with a limited window of opportunity” to apply for primary status as a Class A

16. 47 U.S.C. § 336(f)(1)(B). In addition, the Commission required LPTV licensees seeking Class A designation to submit an application to the Commission within 6 months after the effective date of the rules adopted in the Class A proceeding. *See Class A Order*, 15 FCC Rcd at 6362, paras. 13-14.

17. 47 U.S.C. § 336(f)(2)(B).

18. *See Class A Order*, 15 FCC Rcd at 6361, para. 11.

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television licensee.¹⁹ The Act gives LPTV stations one year to apply for a Class A license, from the date that the Commission’s rules implementing the LPPA become effective.²⁰

The LPPA sets forth eligibility criteria for stations seeking Class A designation that are similar to the eligibility criteria under the CBPA, as discussed above. Specifically, the LPPA provides that the Commission “may approve” an application submitted by an LPTV station if the station meets the following eligibility criteria:

- during the 90-day period preceding the date of enactment of the LPPA (i.e., between October 7, 2022 and January 5, 2023), the station satisfied the same requirements applicable to stations that qualified for Class A status under the CBPA, “including the requirements . . . with respect to locally produced programming;”²¹

19. LPPA Sec.2(b).

20. LPPA Sec.2(c)(2)(A). That provision states: “The rule with respect to which the Commission is required to issue notice under paragraph (1) shall provide that, during the 1-year period beginning on the date on which that rule takes effect, a low power TV station may apply to the Commission to be accorded primary status as a Class A television licensee under section 73.6001 of title 47, Code of Federal Regulations, or any successor regulation.” LPPA Sec.2(c)(2)(A).

21. Section 2(c)(2)(B) provides: “(B) Considerations. – The Commission may approve an application submitted under subparagraph (A) if the low power TV station submitting the application (i) satisfies – (I) section 336(f)(2) of the Communications

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- the station satisfies the Class A service requirements in 47 CFR § 73.6001(b)-(d) or any successor regulation;²²
- the station demonstrates that it will not cause any interference as described in the CBPA;²³
- during that same 90-day period, the station complied with the Commission’s requirements for LPTV stations;²⁴ and
- as of January 5, 2023, the station operated in a Designated Market Area with not more than 95,000 television households.²⁵

Act of 1934 . . . and the rules issued under that section, including the requirements under such section 336(f)(2) with respect to locally produced programming. . . .” LPPA Sec.2(c)(2)(B)(i)(I) (citing 47 U.S.C. § 336(f)(2) of the CBPA).

22. LPPA Sec.2(c)(2)(B)(i)(II). Sections 73.6001(b)-(d) of our rules set forth service requirements and other rules for Class A stations.

23. LPPA Sec.2(c)(2)(B)(ii); 47 U.S.C. § 336(f)(7). *See also* Section III.B.3 *infra* (Eligibility Requirements – Interference Requirements).

24. LPPA Sec.2(c)(2)(B)(ii). *See also* 47 U.S.C. § 336(f)(2)(A)(i)(III).

25. LPPA Sec.2(c)(2)(B)(iii). The LPPA also requires the Commission “[n]ot later than 1 year after the date of enactment” of the LPPA to “submit to the Committee on Commerce, Science and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report regarding the

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Finally, the LPPA requires that a station accorded Class A status must (1) be subject to the same license terms and renewal standards as a license for a full power television broadcast station (except as otherwise expressly provided in the LPPA) and (2) remain in compliance with the LPPA's eligibility criteria during the term of the station's license.²⁶

9. On March 29, 2023, the Commission adopted the *NPRM*, which sought comment on how to implement the window for LPTV stations to apply for primary spectrum use status as Class A television stations, consistent with Congressional direction in the LPPA.²⁷ We received over thirty comments in response to the *NPRM*.²⁸

implementation" of the LPPA including: "(1) a list of the current, as of the date on which the report is submitted, licensees that have been accorded primary status as Class A television licensees; and (2) of the licensees described in paragraph (1), an identification of each such licensee that has been accorded the status described in that paragraph because of the implementation" of the LPPA. LPPA Sec.2(d).

26. LPPA Sec.2(c)(3). Section 2(c)(3) in its entirety provides: "Applicability of License – A license that accords primary status as a Class A television licensee to a low power TV station as a result of the [rules adopted to implement the LPPA] shall (A) be subject to the same license terms and renewal standards as a license for a full power television broadcast station, except as otherwise expressly provided in this subsection; and (B) require the low power TV station to remain in compliance with paragraph (2)(B) during the term of the license."

27. *See generally NPRM.*

28. A list of the comments and reply comments is attached as Appendix A. The Identical Comments (identified in Appendix

*Appendix D***III. DISCUSSION**

10. The rules and policies we adopt herein to implement the LPPA are largely consistent with the Commission's proposals in the *NPRM*, with one exception. We adopt the proposals regarding the application period, the definition of a low power TV station and eligibility criteria, applicable interference requirements, and use of the Nielsen Local TV Station Information Report (Local TV Report) to determine the DMA where the LPTV station's transmission facilities are located for purposes of eligibility. We do not, however, adopt in full the proposal to require that all licensees that convert to Class A status

A) support the adoption of Metropolitan Statistical Areas (MSAs) and Rural Statistical Areas (RSAs), as defined by the Office of Management and Budget, as an alternative to Designated Market Areas (DMAs), as defined by Nielsen Media Research, for determining eligibility pursuant to the LPPA. *See infra* Section III.B.4. (Eligibility Requirements-Designated Market Area). RCC argues that we should discount the Identical Comments on the ground that they do not provide information "regarding the person or persons directing the filing of [the] common comments." RCC Reply Comments at 1. We reject RCC's request. Each of the identical comments includes the name of the individual signing the comment, and the fact that the comments are identical is not grounds for the Commission to ignore them. We also reject RCC's argument that we should discount NAB's comments on the ground that "NAB does not claim to represent any LPTV licensees" and its comments "do not protect LPTV interests." RCC Reply Comments at 3. A party need not "represent" or seek to "protect" LPTV licensees in order to file comments in this proceeding. Moreover, NAB's comments set forth its interests in this proceeding. NAB Comments at 2-4. We therefore have considered all the comments filed in the docket.

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pursuant to the LPPA remain in compliance with the LPPA's DMA eligibility requirement for the term of their Class A license. Instead, we conclude that LPPA Class A stations will not be required to continue to comply with the 95,000 TV household threshold if the population in the station's DMA later exceeds the threshold amount for specific reasons beyond the station's control. Finally, we adopt the *NPRM* proposals regarding the process for applying for Class A status pursuant to the LPPA, decline to amend our rules, as requested, to give LPPA Class A stations must carry rights equivalent to full service stations, and decline to adopt a requested *de minimis* exception to the LPPA's DMA eligibility requirement.

A. Application Period

11. For the reasons discussed in the *NPRM* and described below, we adopt the *NPRM*'s proposals regarding the application period. In the *NPRM*, the Commission proposed to provide LPTV stations a period of one year to apply for Class A status under the LPPA.²⁹ The Commission also tentatively concluded that the public interest would not be served by providing for conversion to Class A status beyond the one year period contemplated by the LPPA.³⁰ The Commission proposed, however, that, similar to its approach in implementing the CPBA, if a potential applicant faces circumstances beyond its control that prevents it from filing by the application deadline, the Commission would examine those instances on a case-by-

29. *NPRM* at para. 10.

30. *Id.* at para. 11.

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case basis to determine the potential applicant's eligibility for filing.³¹ No commenter addressed these issues.

12. The LPPA provides LPTV stations a period of one year to apply for Class A status.³² The LPPA also provides that the Commission may approve an application for Class A status if the application satisfies section 336(f)(2) of the Communications Act of 1934, as amended (which codifies the CBPA).³³ This provision sets forth the eligibility criteria for stations qualifying for Class A status,³⁴ and gives the Commission discretion to determine whether a station that does not satisfy such criteria should otherwise qualify.³⁵ In the *Class A Order*, the Commission declined

31. *Id.*

32. LPPA Sec.2(c)(2)(A).

33. LPPA Sec.2(c)(2)(B).

34. 47 U.S.C. § 336(f)(2)(A) (providing that an LPTV station qualifies for Class A status pursuant to the CBPA if “(A) (i) during the 90 days preceding (the date of enactment of the CBPA) – (I) such station broadcast a minimum of 18 hours per day; (II) such station broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly-controlled low-power stations that carry common local programming produced within the market area served by such group; and (III) such station was in compliance with the Commission’s requirements applicable to low-power television stations; and (ii) from and after the date of its application for a class A license, the station is in compliance with the Commission’s operating rules for full-power television stations . . .”).

35. 47 U.S.C. § 336(f)(2)(B) (providing that a station is a qualifying low-power television station if “(B) the Commission

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either to expand these eligibility criteria or to allow ongoing conversion to Class A status beyond the 6 month window contemplated in the CBPA.³⁶ The Commission reasoned that the basic purpose of the CBPA was to afford existing LPTV stations a window of opportunity to convert to Class A status.³⁷ The Commission also determined that the intent of Congress in enacting the CBPA was to establish the rights of a specific, already-existing group of LPTV stations, and that the public interest would not be served by the ongoing conversion of LPTV stations to Class A status under the CBPA in the future.³⁸ Absent comment on this issue, we find no reason to deviate from these prior determinations and the tentative conclusions in the *NPRM* that the application window will be limited to the one-year application window specified in the LPPA, but that we will examine on a case-by-case basis a potential applicant's claim that it was prevented from filing by the application deadline due to circumstances beyond its control.

determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission").

36. *See Class A Order*, 15 FCC Rcd at 6361, para. 11. *See also Class A MO&O*, 16 FCC Rcd at 8250-52, paras. 15-18.

37. *See Class A Order*, 15 FCC Rcd at 6361, para. 11; *Class A MO&O*, 16 FCC Rcd at 8251-52, para. 18.

38. *Class A MO&O*, 16 FCC Rcd at 8251-52, para. 18. *See also NPRM* at para. 11.

*Appendix D***B. Eligibility Requirements****1. Definition of Low Power TV Station**

13. As proposed in the *NPRM*, we apply the Commission’s recently updated definition of a “low power TV station” for purposes of determining which stations are eligible for Class A status under the LPPA.³⁹ The LPPA provides that the term “low power TV station” has the meaning given the term “digital low power TV station” in section 74.701 of our rules, or any successor regulation.⁴⁰ At the time the LPPA was enacted, section 74.701 contained a definition of the term “digital lower power TV station.” As noted in the *NPRM*, after enactment of the LPPA, the Commission revised that rule to remove references to digital and analog television service, as all LPTV stations have ceased analog operations and there is no longer any need to differentiate between digital and analog in the rules.⁴¹ In place of the prior section 74.701 definition,

39. *NPRM* at para. 12.

40. LPPA Sec.2(a)(3).

41. The Commission recently revised its rules in Parts 73 and 74, *inter alia*, to eliminate rules that no longer have any practical effect given the completion of the DTV transition as well as the post-incentive auction transition to a smaller television band with fewer channels. *See Amendment of Part 73 of the Commission’s Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, FCC 23-72 (rel. Sept. 19, 2023) (*Part 73 Amendment R&O*); *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update*

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section 74.701(k) of our current rules defines a low power TV station as: “[a] station . . . that may retransmit the programs and signals of a television broadcast station, may originate programming in any amount greater than 30 seconds per hour . . . and, subject to a minimum video program service requirement, may offer services of an ancillary or supplementary nature, including subscription-based services.”⁴² No commenter addressed this proposal. We will apply this recently updated definition of an LPTV station for purposes of determining which stations are eligible for Class A status under the LPPA.

14. We adopt the tentative conclusion in the *NPRM* that television translator stations are unlikely to satisfy the eligibility requirements of the LPPA.⁴³ As explained in the *NPRM*,⁴⁴ translator stations “operate for the purpose of retransmitting the programs and signals

of Parts 74 of the Commission’s Rules Related to Low Power Television and Television Translator Stations, MB Docket Nos. 03-185 and 22-261, Report and Order, FCC 23-25 (rel. Apr. 17, 2023) (*Parts 73 and 74 Amendment Report and Order*). Among other revisions, the Commission eliminated all analog rules and references to analog and to out-of-core channels; updated information such as filing dates, locations, and form numbers; and reorganized and modified technical rules to make them more accessible to licensees and other users. *See id.* Any additional rule changes that are relevant to Class A stations will apply to stations that converted to Class A status pursuant to the CBPA and to stations that convert to Class A status pursuant to the LPPA.

42. 47 CFR § 74.701(k).

43. *NPRM* at para. 13.

44. *Id.*

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of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude,”⁴⁵ and thus, are not permitted to “originate programming” as defined in the rules.⁴⁶ While the LPPA does not expressly require that the locally produced content aired by a low power station be produced by that station itself, we noted that translators would be unlikely to qualify under the locally produced programming provisions of the LPPA due to the manner in which translators operate. Translator stations are generally located outside their primary station’s noise limited contour in order to bring service to remote areas.⁴⁷ Thus, while a translator’s primary station(s) may be airing programming produced in the primary station’s noise limited contour, it is unlikely that programming was locally produced within the noise limited contour of the translator. In addition, as explained in the *NPRM*, under the CBPA the Commission specifically found that TV translator stations were not eligible for Class A status, and there is no indication that Congress intended to be

45. 47 CFR § 74.701(a).

46. See 47 CFR § 74.701(h) (“*Local origination*. Program origination if [sic] the parameters of the program source signal, as it reaches the transmitter site, are under the control of the low power TV station licensee. *Transmission of TV program signals generated at the transmitter site constitutes local origination*. Local origination also includes transmission of programs reaching the transmitter site via TV STL stations, but does not include transmission of signals obtained from either terrestrial or satellite microwave feeds or low power TV stations.”) (emphasis added).

47. 47 CFR § 74.787(a)(5).

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more inclusive under the LPPA.⁴⁸ The sole commenter to address this issue, News-Press & Gazette Broadcasting (NPG), agrees that excluding television translator stations from eligibility under the LPPA “is a practical approach for most translators” but argues that “additional flexibility is warranted” for TV translator stations such as NPG’s translator.

15. KXPI-LD, Pocatello, Idaho, retransmits the signal of full power station KIDK, (Fox), Idaho Falls, Idaho.⁴⁹ According to NPG, “KXPI-LD is classified in the Commission’s records as a digital TV translator station, but it functions more like an originator of programming than a translator; it is a primary Fox Network affiliate providing local news, weather, and information to the Pocatello community. . . .”⁵⁰ NPG argues that KXPI-LD meets all of the LPPA’s eligibility requirements, “except its ministerial technical classification as a digital TV translator.”⁵¹ NPG also argues that “the FCC’s ‘low power TV station’ definition, Rule 74.701(k), encompasses stations like KXPI-LD that retransmit the signal of a TV broadcast station, and does not require program

48. *NPRM* at para. 13.

49. NPG Comments at 8-9.

50. *Id.* at 9.

51. *Id.* NPG’s argument is incorrect. While stations can convert between the TV translator classification or the LPTV classification by notifying Commission staff of the station’s intended status, each station must ensure that it properly informs the staff of the designation and can be designated only as either a TV translator or an LPTV station, not both.

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origination.”⁵² NPG urges that the Commission permit stations like KXPI-LD to be eligible for the Class A filing opportunity afforded by the LPPA.⁵³

16. We affirm our tentative conclusion that translator stations are unlikely to satisfy the eligibility requirements of the LPPA. NPG’s argument that the Commission’s definition of a low power TV station encompasses stations like KXPI-LD that retransmit the signal of a TV broadcast station, and does not require program origination, is misplaced. LPAA section 2(c)(2)(B)(i)(I) requires that, during the 90-day eligibility period, an LPTV station must broadcast an average of at least three hours per week of programming produced within the market area served by the station.⁵⁴ As a translator station, KXPI-LD retransmits the programming feed it obtains from full-power station KIDK. NPG does not demonstrate that the KIDK programming that KXPI-LD is retransmitting was produced in KXPI-LD’s own noise limited contour. Thus, NPG has failed to demonstrate how a translator station like KXPI-LD can satisfy the requirement of LPAA section 2(c)(2)(B)(i)(I) to broadcast an average of at least three hours per week of programming produced within the market area served by the translator station.⁵⁵

52. *Id.*

53. *Id.*

54. LPAA Sec.2(c)(2)(B)(i)(I).

55. While we do not preclude a translator station from attempting to demonstrate how it satisfies the eligibility requirements of the LPPA, we also note that KXPI-LD is in

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17. Finally, consistent with the tentative conclusion in the *NPRM*, we confirm that LPTV stations that had not completed their digital transitions prior to the beginning of the eligibility period are not eligible to apply for Class A designation.⁵⁶ No commenter addressed this issue. Since analog television operations are no longer permitted, any LPTV station that has not converted to digital operation is silent and must remain silent until such time as it completes construction of its digital facilities.⁵⁷ The LPPA requires that, to be eligible to convert to Class A status, an LPTV station must meet the statutory programming requirements for the 90-day period preceding the date

the Idaho Falls-Pocatello-Jackson DMA (*see* <https://ustvdb.com/seasons/2022-23/markets/>) which had more than 95,000 TV households at the time the LPPA was enacted (*see* <http://web.archive.org/web/20230605234252/https://ustvdb.com/seasons/2022-23/markets/>). Therefore, the station is also not eligible for Class A status under the LPPA on that basis.

56. A small number of analog LPTV stations had not yet completed construction of their digital facilities by July 13, 2021, the analog termination deadline, and were granted additional time to do so. *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Order and Sixth Notice of Proposed Rulemaking, 37 FCC Rcd 8173, 8174-45 at para. 4 and n.17 (2022). They have all either completed construction or are no longer licensees of the stations that went silent on or before the analog termination date.

57. *Id.* *See also* 47 CFR § 74.790(m).

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of enactment of the LPPA.⁵⁸ As any LPTV station that was silent during this period would not meet these requirements, such stations are not eligible to apply for Class A designation under the LPPA.

2. Eligibility Criteria

18. As noted above,⁵⁹ the LPPA sets forth eligibility criteria for stations seeking Class A designation that are similar to the eligibility criteria under the CBPA. Specifically, the LPPA provides that the Commission “may approve” an application submitted by an LPTV station if the station, during the 90-day period preceding the date of enactment of the LPPA, meets the same requirements in section 336(f)(2) of the Communications Act applicable to stations that qualified for Class A status under the CBPA, “including the requirements . . . with respect to locally produced programming.”⁶⁰ Thus, to qualify for Class A status, in the 90 days preceding the LPPA’s January 5, 2023 effective date (between October 7, 2022 and January 5, 2023) an LPTV station must have met the following requirements: (1) the station must have broadcast a minimum of 18 hours per day;⁶¹ (2) the station must have broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station, or the market area served by a

58. *See* LPPA Sec.2(c)(2)(B)(i)(I).

59. *See supra* para. 8.

60. LPPA Sec.2(c)(2)(B)(i)(I).

61. 47 U.S.C. § 336(f)(2)(A)(i)(I).

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group of commonly controlled LPTV stations that carry common local programming produced within the market area served by such group;⁶² and (3) the station must have been in compliance with the Commission's requirements applicable to LPTV stations.⁶³ In addition, from and after the date of its application for a Class A license, the station must be in compliance with the Commission's operating rules for full power television stations.⁶⁴

19. *Locally Produced Programming.* We will define locally produced programming for purposes of the LPPA as that "produced within the predicted noise-limited contour (see § 73.619(c)) of a Class A station broadcasting the program or within the contiguous predicted noise-limited contours of any of the Class A stations in a commonly owned group." The *NPRM* proposed to define "locally produced programming" for purposes of the LPPA in the same manner as our rules that apply to stations that converted to Class A status pursuant to the CBPA.⁶⁵ As noted above, the LPPA requires that, during the 90-day eligibility period, LPTV stations must have broadcast an average of at least 3 hours per week of programming produced within the market area served by the station.⁶⁶ The *NPRM* noted that the

62. 47 U.S.C. § 336(f)(2)(A)(i)(II).

63. 47 U.S.C. § 336(f)(2)(A)(i)(III). *See also supra* para. 8.

64. LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A)(ii).

65. *See NPRM* at para. 16.

66. LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A)(i)(II).

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Commission was in the process of updating its rules.⁶⁷ Since that time, in the *Part 73 Amendment R&O*, the Commission did update the definition of locally produced programming for Class A stations as that “produced within the predicted noise-limited contour (*see* § 73.619(c)) of a Class A station broadcasting the program or within the contiguous predicted noise-limited contours of any of the Class A stations in a commonly owned group.”⁶⁸ Block supports this proposed definition of “locally produced programming,”⁶⁹ and with the exception of REC’s request for clarification addressed below, no other commenter addressed this issue. As proposed in the *NPRM*, we will apply this definition to define “programming produced within the market area served by the station” for purposes of determining eligibility for Class A status under section 2(c)(2)(B)(i)(I) of the LPPA.

20. We decline at this time to adopt REC’s proposal that we clarify the definition of “locally produced programming” for purposes of the LPPA.⁷⁰ REC advocates that the Commission (1) clarify that local programming may not be repeated within the same week to satisfy the weekly locally produced programming requirement; (2) require that local programming be aired on the same programming stream and not aggregated among multiple

67. *See NPRM* at para. 16.

68. *See Part 73 Amendment R&O*, at n.19 & Appx. A (Final Regulations) at section 73.6000.

69. *See* Block Comments at 2.

70. *See* REC Comments at 3.

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streams to meet the minimum requirement; (3) clarify that the local programming requirement need only be satisfied on one programming stream of simultaneous video and related audio programming; and (4) require that the programming must be simultaneous video and audio programming where the audio portion of the programming directly relates to the video portion of the programming.⁷¹ We note that the concerns underlying REC's proposed clarifications are equally applicable to existing Class A stations under the CBPA. Any change to the definition of "locally produced programming" to address such concerns should be considered with respect to all Class A stations, not just those stations that convert to Class A status pursuant to the LPPA. Because the Commission did not propose to revise the definition of locally produced programming for purposes of Class A stations generally, we find REC's proposals to be outside the scope of this proceeding. Accordingly, we decline to pursue REC's proposals at this time.

21. *Operating Requirements.* For the reasons contained in the *NPRM* and discussed below, we adopt the *NPRM*'s proposals related to operating requirements. The *NPRM* tentatively concluded that all applicants seeking to convert to Class A status under the LPPA must certify that they have complied with the Commission's requirements for LPTV stations during the 90-day eligibility period.⁷²

71. *Id.*

72. See *NPRM* at para. 17. As noted in para. 8 above, to qualify for Class A status under the LPPA, an LPTV station must have been in compliance with the Commission's requirements for

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The *NPRM* also proposed that a station applying to convert to Class A status must comply, beginning on the date of its application for a Class A license and thereafter, with the same Commission Part 73 operating rules that apply to Class A stations that converted pursuant to the CBPA.⁷³ This includes the requirement that existing Class A stations comply with children’s programming and online public inspection file (OPIF) regulations.⁷⁴ No

LPTV stations during the 90-day eligibility period. The LPTV requirements are set forth in Title 47, Part 74, Subpart G of our rules.

73. See *NPRM* at para. 18. See also LPPA Sec.2(c)(2)(B)(i) (I); 47 U.S.C. § 336(f)(2)(A)(ii).

74. See 47 CFR § 73.6026 (listing broadcast regulations applicable to Class A television stations). This rule includes cross references to 47 CFR §§ 73.670 (Commercial limits in children’s programming) and 73.671 (Educational and informational programming for children) as applying to Class A stations. See also 47 CFR § 73.3526 (Online public inspection file of commercial stations) which requires Class A licensees to maintain an online public file, including a political file. In the *Class A Order* that implemented the CBPA, the Commission determined certain Part 73 rules would apply to applicants for Class A status and to stations awarded Class A licenses. See *Class A Order*, 15 FCC Rcd at 6365, para. 23; 47 CFR § 73.6026 (listing Part 73 rules that do apply to Class A stations). Class A stations are not required to comply with certain other regulations that could not apply for technical reasons, such as the full power principal city coverage requirement currently set forth in 47 CFR § 73.625(a). Instead, Class A stations must comply with maximum power levels applicable to LPTV stations. *Class A Order*, 15 FCC Rcd at 6367-68, paras. 28-29. Some other examples of rules that cannot apply to Class A stations for technical reasons include, 47 CFR §§ 73.622(f)(5) (the so-called “largest station in the market” rule); 73.616 (Post-transition DTV

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commenter opposed this approach. Absent objection, we adopt these proposals. Regarding our requirement that Class A TV applicants and licensees maintain an OPIF,⁷⁵ NPG notes that LPTV stations have no OPIF and are therefore unable to upload records to the system.⁷⁶ The Commission will activate an OPIF for LPTV stations that apply to convert to Class A status pursuant to the LPPA and inform applicants when that station's OPIF is ready for the applicant to upload documents required to be maintained in OPIF.⁷⁷

station interference protection); and 73.622(f)(6)-(8) (allowable antenna heights and power levels for full power stations). The Commission recently amended its rules to relocate the text from certain Part 73 rules to new section and subsection numbers. *See Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, FCC 23-72 (rel. Sept. 19, 2023) (*Part 73 Amendment R&O*). The amended rules are not yet effective and, as such, we continue to make reference to the rule numbers as of the date of release of this *Report and Order*.

75. *See* 47 CFR § 73.3526.

76. NPG Comments at n.24.

77. Consistent with current practice for other stations with OPIF obligations, the Commission will upload to the applicant's OPIF those documents that the Commission is responsible for uploading to OPIF. Broadcasters and other media entities must upload only those items required to be in the public file but not otherwise filed with the Commission or available on the Commission's website. Any document or information required to be kept in the public file and that is required to be filed with the Commission electronically is imported to the online public file and updated by the Commission. *See Standardized and*

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22. We also require that all stations that receive a Class A license under the LPPA comply with all Class A regulations, as proposed in the *NPRM*.⁷⁸ As discussed in the *NPRM*, the LPPA requires that LPPA Class A stations “remain in compliance” with the Act’s eligibility criteria⁷⁹ “during the term of the license.”⁸⁰ This includes, among other things, the requirements to broadcast a minimum of 18 hours per day and to broadcast an average of at least three hours per week of locally produced programming each quarter.⁸¹ In addition, the station must continue to comply with the interference requirements adopted herein.⁸² Further, we adopt the tentative conclusion in the *NPRM*⁸³ that there is no reason to exempt LPTV stations converting to Class A status under the LPPA from other rules applicable to LPTV stations that converted to Class A status under the CBPA,⁸⁴ given that the service

Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Second Report and Order, 27 FCC Rcd 4535, 4540-41, para. 11 (2012); *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526, 534, para. 17 (2016).

78. *See NPRM* at para. 19.

79. LPPA Sec.(2)(c)(2)(B).

80. LPPA Sec.2(c)(3)(B).

81. LPPA Sec.2(c)(2)(B). *See also* 47 CFR § 73.6001(b)-(c).

82. *See NPRM* at para. 37. *See infra* Section III.B.3.

83. *See NPRM* at para. 19.

84. *See* 47 CFR §§ 73.6000-6029.

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requirements in the LPPA closely track those in the CBPA and thus it makes sense for Class A rules generally to apply.⁸⁵ No commenter addressed these issues.

23. Finally, we conclude that the requirement to comply with the Class A eligibility requirements begins when an LPTV station's Class A application is submitted. The LPPA states that the "Commission may approve an application [for Class A status] if the low power TV station *submitting the application—satisfies—*paragraphs (b), (c), and (d) of 73.6001,"⁸⁶ which contains the requirements that Class A stations broadcast a minimum of 18 hours per day and broadcast an average of at least three hours per week of locally produced programming each quarter. This requirement is distinct from the separate statutory obligation to meet the eligibility requirements during the 90-day eligibility period of October 7, 2022 to January 5, 2023.⁸⁷ In the *NPRM*, the Commission sought comment on how to interpret the statutory language, and specifically on whether the language should be interpreted to require an applicant for a Class A license to satisfy the requirements from the time it submits its application.⁸⁸ No commenter addressed this issue. As discussed above, the LPPA requires that applicants continue to broadcast a minimum of 18 hours per day and to broadcast an average of at least three hours per week of locally produced

85. *See NPRM* at para. 19; *supra* para. 8.

86. LPPA Sec.2(c)(2)(B)(i)(II).

87. LPPA Sec.2(c)(2)(B)(i)(I).

88. *See NPRM* at para. 20.

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programming each quarter after a Class A license is granted.⁸⁹ We conclude that the language quoted above⁹⁰ would be rendered superfluous if we did not interpret it to apply these requirements from the time the Class A application is submitted.⁹¹ Thus, the requirement to broadcast a minimum of 18 hours per day and broadcast an average of at least three hours per week of locally produced programming each quarter begins when a station submits an application to convert to Class A status pursuant to the LPPA and continues for the term of the Class A license.

24. *License Application and Documentation.* As proposed in the *NPRM*,⁹² we will require an applicant to certify in its application that its station meets the operating and programming requirements of the LPPA. Specifically, the *NPRM* proposed, with respect to the statutory requirement that stations air 18 hours of programming each day during the 90-day eligibility period, that applicants must certify that the station was fully operational for at least 18 hours on each day during the 90-day eligibility period.⁹³ In addition, the *NPRM*

89. LPPA Sec.2(c)(3)(B). *See supra* para. 8.

90. *See supra* n. 89 and accompanying text.

91. *Clark v. Rameker*, 134 S. Ct. 2242, 2248 (2014) (“a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous”) (*quoting Corley v. United States*, 556 U.S. 303, 314 (2009)).

92. *See NPRM* at para. 21.

93. *Id.*

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proposed, with respect to the requirement that stations air three hours of locally produced programming, that an applicant must certify that it was broadcasting an average of at least three hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled LPTV stations that carry common local programming produced within the market area served by such group, on each day during the 90-day eligibility period.⁹⁴ No commenter objected to these proposals. We believe these certification requirements will assist us with the orderly processing of applications received under the LPPA, and thus we adopt the proposals. Finally, we also require that an applicant certify that it was in compliance with the Commission's requirements applicable to LPTV stations.⁹⁵

25. Consistent with the tentative conclusion in the *NPRM*, we require an applicant to submit, as part of its application, documents to support its certification that it meets the operating and programming requirements of the LPPA.⁹⁶ As noted in the *NPRM*,⁹⁷ the Commission staff may later determine that additional documentation is needed to evaluate an application and may at that time require an applicant to submit additional, specific

94. *Id.*

95. 47 U.S.C. § 336(f)(2)(A)(i)(III).

96. *See NPRM* at para. 22.

97. *Id.*

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documentation during consideration of the application.⁹⁸ We believe this approach will ensure eligibility while preserving flexibility for applicants. We decline to permit applicants to certify that they meet operating and programming requirements without submission of supporting documentation, as Block suggests.⁹⁹ We believe such an approach would lack the information necessary for the Commission staff to undertake a sufficient review of the application in these circumstances. NAB suggests that we require stations to provide “a statement concerning the station’s operating schedule and a list of locally produced programs” at the application stage.¹⁰⁰ We will

98. *See* 47 U.S.C. § 308(b).

99. *See* Block Comments at 3.

100. *See* NAB Comments at 5. NAB also suggests that LPPA Class A stations include a list of locally produced programs as part of the station’s issues/programs list. *Id.* *But see* RCC Reply Comments at 12 (arguing that NAB’s suggestion “contravenes basic First Amendment principles and Congress’s explicitly stated goal of fostering diverse voices through use of the Internet”) and LPTVBA Reply Comments at 8 (arguing that existing requirements are sufficient to ensure compliance). We decline to require LPPA Class A stations to provide information regarding local programming as part of their issues/programs list, but note that all Class A stations must comply with the requirement that they place in their online public inspection file “documentation sufficient to demonstrate that the Class A television station is continuing to meet the eligibility requirements set forth” in section 73.6001 of the Commission’s rules. 47 CFR § 73.3526(e)(17). Section 73.6001(b) requires all Class A stations to broadcast a minimum of 18 hours per day and to broadcast an average of at least three hours per week of locally produced programming each quarter. 47 CFR § 73.6001(b). Thus, LPPA Class A stations must include

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adopt NAB's suggestion and require applicants to provide with their application a statement concerning the station's operating schedule during the 90 days preceding January 5, 2023 as well as a list of locally produced programs aired during that time period. We believe that requiring applicants to submit this basic information in support of their certification that they meet the LPPA's eligibility criteria will assist us in processing applications. In addition, an applicant should submit whatever additional documents available to the applicant that it believes best support its certification that it meets the operating and programming requirements of the Act. For example, to support its certification that the station was on the air at least 18 hours each day during the eligibility period, a station could provide electric power bills from a third party vendor that specify the station's broadcast facility location for the designated period,¹⁰¹ and/or copies of any program guides, EAS logs, or agreements to purchase and air programming on the specified station during

in their public inspection file documentation sufficient to show that the station is continuing to meet these requirements. In light of this existing public inspection file requirement, we decline to require LPPA Class A stations to include a "specific statement detailing hours of operation" as part of the continuing eligibility documentation, as NAB suggests. *See* NAB Comments at 5.

101. A significant fluctuation in the amount of power used on a monthly basis during the 90-day eligibility period could indicate that the station reduced its hours of operation for one or more months. In addition, for example, we would expect that a station operating at 15 kW, the maximum operating power for a UHF LPTV station, for 18 hours seven days a week, would be operating with a substantial amount of power, as opposed to an LPTV station that was airing programming sporadically.

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the times of operation in an amount sufficient to satisfy this operating requirement.¹⁰² If the station was silent during any portion of the eligibility period, the station must identify any silent periods and the reasons why the station was silent.¹⁰³ To support its certification that a station aired an average of at least three hours of locally produced programming each week, the station could, for example, submit copies of any agreements to purchase and air such programming and/or identify the producer of any programming it claims is locally produced, the location where the programming was produced, and records of advertisements aired during locally produced programming showing that the programming was in fact aired.

102. For example, if a station had contracts for at least 18 hours of programming from various program suppliers during the 90-day eligibility period, this would strongly indicate that the station was operating at least 18 hours per day during that time period.

103. Section 74.735(b) of our rules provides that, in the event that causes beyond the control of a licensee make it impossible to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the Commission. Notification must be sent to the Commission no later than the 10th day of discontinued operation and, during such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, an informal written request should be made to the Commission no later than the 30th day for such additional time as may be deemed necessary. 47 CFR § 74.735(b).

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26. Apart from a statement regarding the station's operating schedule and a list of locally produced programming aired during the 90 days preceding January 5, 2023, we decline to mandate the form of the additional documents that applicants submit to support their applications.¹⁰⁴ We recognize that some applicants may not have specific types of documentation, or that a specific document may not be in a form that supports the applicant's certification.¹⁰⁵ In light of that, we permit each applicant to provide with the station's application, documents that it has that best support its certification that it met the operational and programming requirements of the LPPA during the eligibility period. The Commission staff will review the documentation on a case-by-case

104. REC argues that, to demonstrate that a station is on the air for 18 hours/day, applicants should be required to include utility bills, photos of the transmitting facility (including a powered-on transmitter), copies of any leases, and any programming grids and programming contracts. *See* REC Comments at 4-5. To demonstrate that the station met the local programming eligibility requirement, REC argues that applicants should be required to submit program logs including the name of the program, the air date, time and length of the program, the location where the program was produced, and a description of the program. *Id.* While we agree that such documents may be useful to support an application, for the reasons described herein we decline to mandate that all of these specific documents are required for every application and permit applicants to submit the documents they have that they believe best support their application.

105. For example, Block notes that utility costs are often "baked into" a tower lease and that the tower owner may not be able to apportion electricity costs among different tower tenants. Block Comments at 3.

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basis and determine if it will need to request additional documentation before it can make a determination whether to grant a Class A license application.

27. *Alternative Eligibility Criteria.* As proposed in the *NPRM*, we will allow deviation from the strict statutory eligibility criteria under the LPPA only where deviations are insignificant or where there are compelling circumstances such that equity mandates a deviation. No commenter disagreed with this approach.¹⁰⁶ As discussed above,¹⁰⁷ similar to the CBPA, the LPPA provides the Commission with additional discretion in evaluating applicants for Class A status if “the Commission determines that the public interest, convenience, and necessity would be served by” or “for other reasons determined by the Commission” for treating the station as eligible for conversion to Class A pursuant to the LPPA.¹⁰⁸ In the *Class A Order*, the Commission determined that it would allow deviation from the strict statutory eligibility criteria in the CBPA “only where such deviations are insignificant or when we determine that there are compelling circumstances, and that in light of those compelling circumstances, equity mandates such a deviation.”¹⁰⁹ The Commission gave as an example

106. Lockwood proposed that we adopt a *de minimis* exception to the LPPA’s 95,000 TV household eligibility requirement. As discussed below, we reject that proposal. *See infra* paras. 54-56.

107. *See supra* para. 12.

108. 47 U.S.C. § 336(f)(2)(B).

109. *Class A Order*, 15 FCC Rcd at 6369, para. 33.

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of such compelling circumstances “a natural disaster or interference conflict which forced the station off the air during the 90-day period before enactment of the CBPA.”¹¹⁰

28. We conclude that, similar to the Commission’s approach in implementing the CBPA, we will allow deviation from the strict statutory eligibility criteria in the LPPA only where such deviations are insignificant or where there are compelling circumstances such that equity mandates a deviation.¹¹¹ We will consider any such requests on a case-by-case basis. As the Commission tentatively concluded in the *NPRM*,¹¹² we believe that the LPPA provides precise and limited eligibility criteria and, except in very limited circumstances, we are not inclined to expand the specific qualifying criteria beyond that identified in the statute.

3. Interference Requirements

29. We adopt the tentative conclusions in the *NPRM* that our interference rules applicable to existing Class A stations, including requirements that were adopted subsequent to enactment of the CBPA in 1999,¹¹³ will

110. *Id.* The Commission also concluded that foreign language stations should have the same eligibility requirements as any other potential Class A station under the CBPA. *Id.* at paras. 33-35.

111. *Class A Order*, 15 FCC Rcd at 6369, para. 33.

112. *NPRM* at para. 24.

113. The digital-to-digital interference protection standards for LPTV stations converting to Class A status vis-à-vis LPTV

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apply to stations that convert to Class A status pursuant to the LPPA.¹¹⁴ The LPPA provides that the Commission may approve an application by an LPTV station if it demonstrates that “the Class A station for which the license is sought will not cause any interference described in section 336(f)(7) of the Communications Act. . . .”¹¹⁵ Section 336(f)(7) describes the interference protection requirements for LPTV stations that sought Class A status under the CBPA with respect to full power television, LPTV, TV translator, and land mobile stations. As noted in the *NPRM*, LPTV stations that converted to Class A status pursuant to the CBPA in 2000 began their primary status as analog stations, and therefore, that section related to analog operations.¹¹⁶ All television broadcast stations are now operating digital facilities.¹¹⁷ While the LPPA specifically references the interference requirements “described in section 336(f)(7),” we affirm the tentative conclusion in the *NPRM* that inclusion of this language does not evince an intent by Congress to compel LPTV stations applying for Class A licenses under the LPPA to demonstrate compliance with outdated and

and TV translator stations pursuant to the LPPA are now found in sections 74.792 and 74.793 of the rules. *NPRM* at para. 29.

114. *NPRM* at paras. 27-29.

115. LPPA Sec. 2(c)(2)(B)(ii).

116. *NPRM* at para. 26.

117. *See supra* para. 3 and n.8; DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009) (Full power stations largely completed their digital transition by June 12, 2009); *NPRM* at para 26.

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superseded interference rules.¹¹⁸ Rather, we affirm the *NPRM*'s tentative conclusion that requiring applicants to demonstrate compliance with current interference requirements relevant to digital facilities would guarantee the purpose of the statutory provision. This approach will ensure that LPTV stations converting to Class A status under the LPPA will not cause interference to the licensed or previously proposed facilities of digital broadcast stations, including full power, Class A, LPTV and TV translator stations.¹¹⁹

30. NPG generally supports that the current interference rule rather than the old analog rule should be applied. However, NPG would have us provide flexibility to permit interference beyond what is permitted in our current rules. NPG states that the Commission should adopt a “flexible approach” granting applications that would violate the rule “if the applicant is able to demonstrate no actual interference, acceptance by the licensee subject to such interference, or other showing that the public interest is served by the applicant obtaining Class A status.”¹²⁰

118. *NPRM* at para. 26, citing *Pub. Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 452-55 (1989) (noting that statutes are to be read in a manner that avoids absurd results); *City of Lincoln, Neb. v. Ricketts*, 297 U.S. 373, 376 (1936) (noting duty to give words their natural significance unless that leads to an unreasonable result plainly at variance with the evident purpose of the legislation).

119. *NPRM* at para. 26.

120. NPG Comments at 9-10. Class A and LPTV stations are permitted to cause interference to no more than 0.5 percent of the population served by full-power and Class A television stations, and no more than 2 percent of the population served by LPTV and

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We are not persuaded to grant this request. First, we do not anticipate any scenarios where interference is predicted, but the applicant is able to demonstrate a lack of actual interference.¹²¹ The *TVStudy* software used to prepare and process applications already considers the elements likely to cause actual interference. Specifically, *TVStudy* makes full use of terrain shielding and Longley-Rice terrain propagation methods to determine whether a proposed facility is predicted to cause impermissible interference consistent with OET Bulletin No. 69,¹²² accounting for unique characteristics such as terrain.¹²³ For this reason, we do not believe there would be merit in accepting other methods of determining interference. Second, the Commission's rules already allow applicants and licensees to accept interference subject to Commission approval,¹²⁴ and the Media Bureau will continue to consider

TV translator stations. *See* 47 CFR §§ 73.6017, 73.6018, 73.6019, and 74.793.

121. NPG Comments at 9-10.

122. *See Office of Engineering and Technology Releases and Seeks Comment on Updated OET-69 Software*, ET Docket No. 13-26, GN Docket No. 12-268, Public Notice, 28 FCC Red 950 (OET 2013) at 1. OET Bulletin No. 69 can be found at <https://transition.fcc.gov/oet/info/documents/bulletins/oet69/oet69.pdf> (OET Bulletin No. 69).

123. *See* OET Bulletin No. 69 at 1. 47 CFR §§ 73.6018, 73.616(d)(1), 73.619(c)(2).

124. *See, e.g.*, 47 CFR §§ 73.620(e) (Full power stations may operate with facilities that would result in more than 0.5 percent additional interference to another full power station if that station agrees, in writing, to accept the additional interference, and the

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and accept interference agreements in processing Class A license applications filed pursuant to the LPPA without the need to adopt additional flexibility. Finally, we reject NPG's suggestion that waiver of television broadcast interference protection rules should be considered upon undefined public interest arguments.¹²⁵ NPG provides no example – and we can imagine none – where we have granted an LPTV station primary status that caused interference to a licensed (or previously proposed) broadcast facility entitled to protection. Congress clearly intended the LPPA to apply to a discrete number of LPTV stations that satisfy specific eligibility requirements and protect existing stations and previously proposed facilities. We decline to adopt an exception that would contravene this careful balance.

31. *Protection of Land Mobile Stations.* The LPPA provides that the Commission may approve an application by an LPTV station if it “demonstrates to the Commission that the Class A station for which the license is sought will not cause any interference described in section 336(f)

Commission finds such action is in the public interest), 73.6022(a) (same with respect to Class A stations vis-à-vis full power, Class A, LPTV and TV translator stations, notwithstanding the interference standards set forth in the rules, if the Commission finds such action is in the public interest), 74.703(a) (“Except where there is a written agreement between the affected parties to accept interference,” an application for a new LPTV station or modification of facilities must comply with interference rules).

125. NPG Comments at 9-10.

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(7) of the Communications Act of 1934. . . .”¹²⁶ Section 336(f)(7)(C) of the CBPA provides that the Commission may not grant a Class A license or modification of license where the Class A station will cause interference within the protected contour of land mobile stations.¹²⁷ We adopt the proposal in the *NPRM* that Class A applications will not be grantable where the Class A station will cause interference within the protected contour of land mobile stations which have been allocated the use of TV channels 14-20 in certain urban areas of the country, as well as channel 16 in the New York City metropolitan area.¹²⁸ We received no specific objection to this proposal. We note that in implementing the CBPA, the Commission implemented the same interference protections and procedures which are prescribed in section 74.709 of the rules, and these rules have not changed.¹²⁹

126. LPPA Sec. 2(c)(2)(B)(ii).

127. 47 U.S.C. § 336(f)(7). Specifically, section 74.709 of our rules (47 CFR § 74.709) requires that, in order to protect land mobile stations, a low power TV or TV translator station cannot specify a site that is located within the protected contour of a co-channel or first adjacent land mobile assignment. Generally, the protected contour is 80 miles from the geographic center of the areas listed in 47 CFR §§ 22.625(b)(1), 90.303(b); for frequencies in the 470-512 megahertz band identified in 47 CFR §§ 22.621, 90.303(b), or in the 482-488 megahertz band in New York. In addition, a low power TV or TV translator station application cannot be granted where its proposed field strength limit calculated at the land mobile boundary exceeds the limits set forth in 47 CFR § 74.709(d).

128. *NPRM* at para. 30.

129. 47 CFR § 74.709; *NPRM* at para. 30.

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32. We decline to adopt as both unnecessary and outside the scope of this proceeding, the County of Los Angeles, California's request that we incorporate by reference comments in a proceeding requested by the Land Mobile Communications Council regarding rules governing separation between land mobile stations and television stations located in the T-Band.¹³⁰ Unless and until there is a change in the applicable rules, we will apply our existing land mobile protection requirements in considering applications to convert to Class A status pursuant to the LPPA. We note that in limiting eligibility to LPTV stations operating in a DMA or an equivalent with not more than 95,000 television households, Congress intended to convey the benefits of Class A status under the LPPA to LPTV stations operating in smaller DMAs. T-band radio systems, which are used for public safety and industrial/business land mobile communications, operate on 470-512 MHz (television channels 14 through 20) in 13 large cities,¹³¹ located in the largest DMAs with more than 1,000,000 television households. LPTV stations operating in larger DMAs or an equivalent television market are not eligible for Class A status under the LPPA and thus, it is unlikely that land mobile operations in the T-band will be affected by the LPPA..

130. County of Los Angeles, California Comments at n.5, citing Public Notice, RM-11915, Report No. 3186 (rel. Jan. 12, 2022). The nearest DMA to Los Angeles County, CA impacted by implementation of the LPPA is more than 800 km away in Eureka, CA (*see infra* n 169), and could not result in interference in Los Angeles County.

131. 47 CFR § 90.303.

*Appendix D***4. Designated Market Area**

33. The LPPA requires that an LPTV station must demonstrate that as of January 5, 2023, the station “*operates in a Designated Market Area with not more than 95,000 television households.*”¹³² The LPPA further states that DMA means “(A) a [DMA] determined by Nielsen Media Research or any successor entity; or (B) a [DMA] under a system of dividing television broadcast station licensees into local markets using a system that the Commission determines is equivalent to the system established by Nielsen Media Research . . . ”¹³³ The Commission sought comment in the *NPRM*¹³⁴ on (1) the meaning of the word “operates” in the LPPA,¹³⁵ and (2) whether to adopt the Nielsen Local TV Station Information Report (Local TV Report) for determining DMAs or an equivalent alternative local market system.¹³⁶ We address each of these issues below.

132. LPPA Sec.2(c)(2)(B)(iii) (emphasis added).

133. LPPA Sec.2(a)(2)(A) and (B). The Nielsen Company (Nielsen) describes a DMA region as “a group of counties and zip codes that form an exclusive geographic area in which the home market television stations hold a dominance of total hours viewed. There are 210 DMA regions, covering the entire continental U.S., Hawaii, and parts of Alaska.” *See* Nielsen, DMA Regions, <https://markets.nielsen.com/us/en/contact-us/intl-campaigns/dma-maps/> (rel. Oct. 24, 2022).

134. *NPRM* at para. 32.

135. LPPA Sec.2(c)(2)(B)(iii).

136. *See* LPPA Sec.2(a)(2)(B).

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34. “*Operates*” in the DMA. As proposed in the *NPRM*,¹³⁷ we conclude that “operates” means that the LPTV station applying for Class A status under the LPPA must demonstrate that its transmission facilities, which include the structure on which its antenna is mounted, are located within the qualifying DMA. No commenters addressed this issue. We find that this requirement is consistent with Congress’s intent to limit Class A status to stations located in small DMAs, as evidenced by its limiting eligibility for Class A status under the LPPA to LPTV stations operating in a DMA or an equivalent with not more than 95,000 television households.¹³⁸ To make the necessary demonstration, we will require applicants to provide the following information as it existed on January 5, 2023, as proposed in the *NPRM*: (1) the coordinates of the station’s transmission facilities (*i.e.*, the structure on which its antenna is mounted); (2) the city/town/village/or other municipality and county in which the transmission facilities are located; and (3) the qualifying DMA in which the station’s transmission facilities are located.¹³⁹

137. *NPRM* at para 31-34.

138. *Id.* at para. 32.

139. *Id.* Starting in 2022, Nielsen began including broadband only (BBO) households, households that receive video programming on a TV/monitor only through a broadband connection, in its local market measurement. *See* Nielsen, Nielsen Announces “Impressions First Initiative” and the Integration of Broadband Only Homes Into Local Measurement in January 2022, at <https://www.nielsen.com/news-center/2021/nielsen-announces-impressions-first-initiative-and-the-integration-of-broadband-only-homes-into-local-measurement-in-january-2022/> (Sept. 2021). Nielsen publishes annually, in the fall, an estimate of the number

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35. *Use of Nielsen to Determine DMAs.* We also adopt the proposal in the *NPRM* to use the Nielsen Local TV Report in determining the DMA where the LPTV station's transmission facilities were located as of January 5, 2023.¹⁴⁰ First, the decision is fully consistent with the LPPA which contemplates the use of Nielsen.¹⁴¹ Furthermore, as explained in the *NPRM*, use of the Nielsen Local TV Report is consistent with the Commission's *Nielsen DMA Determination Update Order*,¹⁴² which adopted Nielsen's monthly Local TV Report as the successor publication to Nielsen's Annual Station Index and Household Estimates and determined that the Local TV Report should be used to define "local market" as stated in other statutory provisions and rules relating to carriage, including retransmission consent, distant signals, significantly viewed, and field strength

of TV households in each DMA. For purposes of implementing the LPPA, we will look at Nielsen's estimates of DMA TV households published in the fall of 2022 to determine the number of DMA TV households as of January 5, 2023 and therefore the estimates include BBO households.

140. *NPRM* at para 33.

141. LPPA Sec.2(a)(2)(A).

142. *See Update to Publication for Television Broadcast DMA Determination for Cable and Satellite Penetration*, MB Docket No. 22-239, Report and Order, FCC 22-89 (rel. Nov. 16, 2022) at para. 1 (*Nielsen DMA Determination Update Order*). *See also id.* at para. 6 (reiterating Nielsen's clarification that it has "always told stations the DMAs to which they have been assigned upon request and free of charge").

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contour.¹⁴³ When the Commission sought comment on what publication to use for DMA determinations in that proceeding, commenters unanimously supported use of the Local TV Report.¹⁴⁴ Thus, we note that the record in that proceeding indicated that the Local TV Report was the sole source of information regarding DMA determinations and that there was no company currently accredited to determine the local market area of broadcast television stations.¹⁴⁵ In addition, some commenters in this proceeding support our decision to use the Nielsen Local TV Report for purposes of implementing the LPPA. As NAB points out, the Commission and the television industry have long relied on Nielsen DMA data to define television markets.¹⁴⁶ REC notes that the Nielsen Local TV Report provides a “cut-and-dry” determination of a station’s DMA, and that the “debate and development of any alternative system would further delay the process.”¹⁴⁷

36. While the LPPA defines a DMA as “a [DMA] determined by Nielsen Media Research or any successor

143. *Id.* at para. 4.

144. *See Nielsen DMA Determination Update Order* at para. 1.

145. *Id.* The Commission also noted that in the LPPA, which was enacted after release of the *Nielsen DMA Determination Update Order*, Congress chose to define DMA as determined by Nielsen Media Research. *NPRM* at n.112.

146. NAB Comments at 3.

147. REC Comments at 5. *But see* REC Reply Comments at 4 (stating that Comscore should be considered an alternative to Nielsen).

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entity,” it also provides that a DMA may be “a [DMA] under a system of dividing television broadcast station licensees into local markets using a system that the Commission determines is equivalent to the system established by Nielsen Media Research. . . .”¹⁴⁸ The *NPRM* sought comment on alternatives to the Nielsen Local TV Report that would be “equivalent to the system established by Nielsen Media Research.”¹⁴⁹ For the reasons discussed below, we decline to adopt any of the alternatives proposed. The *NPRM* specifically sought comment on the LPTV Broadcasters’ Association (LPTVBA) requests that the Commission use Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) as defined by the Office of Management and Budget (OMB) using census data to implement the LPPA.¹⁵⁰ Some commenters support the

148. LPPA Sec.2(a)(2)(A) and (B).

149. LPPA Sec.2(a)(2)(B); *NPRM* at para 34. The Commission asked that any commenter suggesting an alternative publication to the Nielsen Local TV Report to identify the publication as well as the similarities and differences in assigning stations to television markets, and explain why the alternative publication is preferable. *Id.*

150. *NPRM* at para. 34. *See id.* (citing E-mail from Frank Copsidas, President and Founder, LPTV Broadcasters’ Association, to Holly Saurer, Chief, Media Bureau, FCC (Feb. 27, 2023) (Copsidas Feb. 27 Letter)). Among other things, the LPTVBA makes a number of accusations regarding the character and business dealings of Nielsen Media Research. As we explain above and as we explained in the *NPRM*, Congress chose to define DMA as determined by Nielsen Media Research in the LPPA, and despite its lack of accreditation, the Commission found based on the record of the *Nielsen DMA Determination Update* proceeding that Nielsen is the sole source of information regarding DMA determinations. *See NPRM* at para. 33.

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suggestion.¹⁵¹ Flood contends that MSA market definitions “more accurately reflect the characteristics of the LPTV station’s service area that are pertinent to determining eligibility” under the LPPA.¹⁵² Flood also argues that the Nielsen DMAs are “geographically overbroad” and group some of the most rural areas in the U.S. with distant major cities, rendering some stations in rural areas ineligible for Class A status.¹⁵³ Flood also notes that, under a DMA approach, similarly situated LPTV stations in immediately adjacent counties would receive inconsistent eligibility determinations, and, in some situations, stations in densely populated, larger counties would be eligible while those in adjacent, smaller, less densely populated counties would be ineligible.¹⁵⁴ The Identical Commenters urge the

151. *See* Flood Comments at 1-12; Identical Comments at 1-3; Communications Technologies Comments at 1-2; LPTVBA Reply Comments at 1-6; Flood Reply Comments at 1-4. Flood uses the term MSA to refer to both Metropolitan and Micropolitan Statistical Areas (mSA). *See* Flood Comments at 1, n. 2. LPTVBA argues that Metropolitan and Micropolitan Statistical Areas are two types of core based statistical areas (CBSAs) and urges the Commission to use CBSAs as an alternative local market system for purposes of the LPPA. *See* LPTVBA Reply Comments at 2-3.

152. Flood Comments at 1. *See also* LPTVBA Reply Comments at 2. LPTVBA argues that any area not designated an MSA or a mSA should automatically be considered an RSA, and a station located in an RSA should be eligible under the LPPA population limit. LPTVBA Reply Comments at 2.

153. Flood Comments at 5-7. *See also* LPTVBA Reply Comments at 3, n. 9.

154. Flood Comments at 5-7. Flood provides examples of stations in adjoining DMAs that would receive different eligibility

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Commission to “create a TV market definition system that relies on . . . MSAs as the primary criteria for determining a set of geographic areas equivalent to the Nielsen DMA metric of 95,000 households or fewer.”¹⁵⁵ They also note that the Nielsen DMA system does not include LPTV stations in its assessments and that “Nielsen’s data is private and requires costly fees for access.”¹⁵⁶

37. We decline to use market classifications based on Census data, such as MSAs or RSAs, for purposes of implementing the LPPA. The LPPA specifically directs that the Commission use either Nielsen DMAs or a “system of dividing television broadcast station licensees into local markets” that is “equivalent” to the system established by Nielsen.¹⁵⁷ Census classifications are not a “system of dividing television broadcast station licensees into local markets,” and thus cannot be considered “equivalent” to the system established by Nielsen. Such classifications do not reflect television stations in the market, the reach of those local stations, the location of the populations they serve, or local viewing patterns.¹⁵⁸ On the other hand, a

treatment under the LPPA. *Id.* at 5-7. *See also* LPTVBA Reply Comments at 3, n. 9.

155. Identical Comments at 2 (citing the Copsidas Feb. 27 Letter).

156. *Id.* at 2-3 (citing the Copsidas Feb. 27 Letter). *See also* Communications Technology Comments at 2.

157. LPPA Sec.2(a)(2)(A) and (B).

158. For this reason, we disagree with LPTVBA that classifications based on Census data are preferable because they

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Nielsen DMA is an “exclusive geographic area in which the home market television stations hold a dominance of total hours viewed” and ties specifically to television viewing markets.¹⁵⁹ Thus, we conclude census-based categories are not “equivalent” to the system established by Nielsen.¹⁶⁰ In addition, we note that classifications based on Census data are based on population and group urban areas (the population “nucleus”) with outlying counties “that have a high degree of integration” with the population nucleus

reflect “economic markets based on actual population behavior.” LPTVBA Reply Comments at 3.

159. *See supra* n. 133. NAB agrees that Census definitions like MSAs and RSAs have nothing to do with market assignment information or determining television broadcast markets, unlike Nielsen. *See* NAB Comments at 3. REC notes that Census data does not reflect “television households,” the term used in the LPPA’s DMA eligibility requirement (“not more than 95,000 television households”). *See* REC Reply Comments at 3; LPPA Sec.2(c)(2)(B)(iii). RCC opposes the use of MSAs because “they represent huge populations and areas” and would exclude many LPTV stations from converting to Class A. RCC Reply Comments at 5.

160. NAB agrees that using MSA or RSA definitions would be “establishing alternative market definitions that are wildly different from those established by Nielsen and are not ‘equivalent to’ Nielsen DMAs as the LPPA requires.” NAB Comments at 3. While we agree with LPTVBA that the Act permits us to consider local market definitions that differ from Nielsen DMAs, *see* LPTVBA Reply Comments at 4-5, we believe that the Act’s requirement that any alternative system be “equivalent” the system established by Nielsen requires such alternative system to relate in some fashion to television markets and viewing patterns.

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based on commuting trends.¹⁶¹ OMB itself warns that such classifications do not themselves adequately differentiate between urban and rural areas.¹⁶² Thus, these census classifications do not address the concerns raised by those commenters who argue that Nielsen DMAs are geographically overbroad.¹⁶³ We also note that the kind of inconsistent eligibility results that some commenters argue would occur using Nielsen DMAs are inevitable with any system that divides the country into geographic markets, and are not unique to Nielsen.¹⁶⁴ Furthermore, we decline Identical Commenters' invitation that the Commission fabricate a new classification system based on Census data¹⁶⁵ because we find that such an exercise is unnecessary due to the availability of Nielsen data which is appropriate for this purpose. We also believe that such an exercise would significantly delay our ability to implement the LPPA. We also do not believe the failure of Nielsen to

161. *NPRM* at para. 34. *See generally* OMB, *2020 Standards for Delineating Core Based Statistical Areas*, 86 FR 37770, 37771 (July 16, 2021) (*2020 CBSA Standards*), available at <https://www.federalregister.gov/documents/2021/07/16/2021-15159/2020-standards-for-delineating-core-based-statistical-areas>.

162. *2020 CBSA Standards*, 86 FR at 37772 (warning MSA “delineations do not produce an urban-rural classification, and confusion of these concepts has the potential to affect the ability of a program to effectively target either urban or rural areas, if that is the program goal”).

163. *See supra* para. 36.

164. Flood Comments at 5-7.

165. Identical Comments at 2 (citing the Copsidas Feb. 27 Letter).

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assign LPTV stations to DMAs is relevant¹⁶⁶ because the eligibility requirement is that the station “operate” in the DMA (that is, its transmission facilities are located within the qualifying DMA), not that it be assigned to the DMA. Finally, reference to the fact that Nielsen is a private company that charges for some of its materials¹⁶⁷ is not a barrier to our decision here. Nielsen has represented that it will provide to stations at no charge information about the DMA to which the station is assigned,¹⁶⁸ and information about the number of TV households in each DMA is publicly available.¹⁶⁹

166. *Id.* at 2-3 (citing the Copsidas Feb. 27 Letter). *See also* Communications Technology Comments at 2.

167. *Id.* at 2-3 (citing the Copsidas Feb. 27 Letter). *See also* Communications Technology Comments at 2.

168. *See supra* n. 142 (citing *Nielsen DMA Determination Update Order* at paras. 1, 6 (reiterating Nielsen’s clarification that it has “always told stations the DMAs to which they have been assigned upon request and free of charge”). We interpret Nielsen’s commitment in this regard to mean it will inform LPTV stations seeking to convert to Class A status pursuant to the LPPA, at no charge, the DMA in which the station’s transmission facilities are located. *See supra* para. 34. Any LPTV station seeking to file an application pursuant to the LPPA that needs further information in this regard may contact the Commission staff.

169. *See* <http://web.archive.org/web/20230605234252/https://ustvdb.com/seasons/2022-23/markets/>. Thirty-three Nielsen DMAs had fewer than 95,000 TV households as of January 5, 2023. These DMAs are: Elmira-Corning, Watertown, Bend, Alexandria, Marquette, Jonesboro, Bowling Green, Laredo, Butte-Bozeman, Lafayette, IN, Grand Junction-Montrose, Twin Falls, Lima, Great Falls, Meridian, Parkersburg, Greenwood-Greenville, Eureka, Cheyenne-Scottsbluff, San Angelo, Casper-Riverton, Mankato,

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38. We also reject RCC’s argument that our proposed adoption of an approach that limits eligibility under the LPPA to LPTV stations in DMAs with no more than 95,000 TV households is “nonsensical.”¹⁷⁰ This commenter points out that, under this approach, only thirty-three Nielsen DMAs would qualify under the LPPA (in other words, only 33 out of 210 DMAs),¹⁷¹ amounting to only 1.6% of TV households.¹⁷² As a result, RCC argues that Congress could not have intended for use of Nielsen DMAs.¹⁷³ We disagree. Congress clearly intended that eligibility under the LPPA be limited, as the Act expressly provides that eligibility is limited to DMAs with no more than 95,000 TV households. As NAB notes, elevating LPTV stations from secondary to primary Class A status comes at the cost of “effectively block[ing] coverage and service improvements

Ottumwa-Kirksville, Saint Joseph, Fairbanks, Zanesville, Victoria, Helena, Presque Isle, Juneau, Alpena, North Platte, and Glendive. Commission staff will review and confirm DMA information in all applications filed pursuant to the LPPA.

170. RCC Comments at 6.

171. RCC Comments at 5. *See also* REC Comments at 5 (noting that only LPTV stations in DMAs ranked 178 (Elmira-Corning, New York) through 210 (Glendive, Montana) would qualify for Class A status under the LPPA).

172. *See* RCC Comments at ii.

173. *Id.* at 4 (stating that Congress “would [not] waste its time for the purpose of affecting such a marginal impact”). *See also* Flood Comments at 2 (urging use of MSAs to “maximize eligibility for stations” to elevate to Class A status).

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by full-service stations.”¹⁷⁴ In turn, Congress sought to allow certain LPTV stations in only smaller DMAs (not all small LPTV stations or all LPTV stations in rural areas) to elevate to primary status. We decline to read the LPPA as promoting maximum elevation of LPTV stations to primary status; rather, Congress adopted a much more balanced approach.

39. We also decline to use Comscore data as an alternative to the Nielsen Local TV Report for purposes of the LPPA, as advocated by several commenters.¹⁷⁵ Like Nielsen, Comscore is a media analytics company that produces a list of television market areas and a calculation of the number of television households in each market.¹⁷⁶ Because Comscore, like Nielsen, has a

174. NAB Comments at 4.

175. *See* Lockwood Comments at 1-3; NPG Comments at 4-6; REC Reply Comments at 3-4.

176. Comscore uses its own proprietary system for geographic market definitions and number of TV households. Comscore, Local Market Definitions, *at* <https://www.comscore.com/Products/Television/Local-Market-Definitions> (last visited Oct. 2, 2023). For instance, we note that Nielsen defines a TV household as follows: TV households must have at least one operable TV/monitor with the ability to deliver video via traditional means of antennae, cable set-top-box or satellite receiver and/or with a broadband connection. *See* Nielsen, Nielsen Estimates 120.6 Million TV Homes in the U.S. for the 2019-2020 TV Season (Aug. 2019), *at* <https://www.nielsen.com/insights/2019/nielsen-estimates-120-6-million-tv-homes-in-the-u-s-for-the-2019-2020-tv-season/#:~:text=Nielsen's%20national%20definition%20of%20a,%20Audience%20measurement%20TV>. Comscore states that it

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proprietary market system and requires payment for access, LPTVBA opposes adoption of Comscore data as an alternative local market system.¹⁷⁷ REC comments that “the debate and development of any alternate system” to Nielsen “would further delay the process and could defeat the purpose of limiting” Class A conversions to rural areas,¹⁷⁸ but also noted that Comscore markets “could be” comparable to Nielsen DMAs and should be considered.¹⁷⁹ While it is possible that Comscore could qualify as a “system of dividing television broadcast station licensees into local markets” that is “equivalent” to the system established by Nielsen,¹⁸⁰ we find that the record here does not establish any material benefits from use of Comscore either in addition to or in place of Nielsen for purposes of the LPPA, nor that any such benefits would outweigh the uncertainty and delay that use of Comscore would have in issuing Class A licenses. In particular,

has “the largest and most representative TV viewing measurement footprint covering 1-in-3 homes across 75 million TV screens in over 30M households.” Comscore, National TV Measurement, *at* <https://www.comscore.com/Products/Television/National-TV-Measurement> (last visited Oct. 2, 2023).

177. See LPTVBA Reply Comments at 4. Apart from that issue, LPTVBA notes that it has “no reason to question the veracity of Comscore data.” *Id.*

178. REC Comments at 5.

179. REC Reply Comments at 3 (explaining that Comscore, like Nielsen, has 210 market areas, and that only Comscore markets 164 through 210 would meet the 95,000 television household criteria).

180. LPPA Sec.2(a)(2)(B).

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we are concerned about introducing uncertainty into the application review process, in the instance where Comscore's market classifications may differ from Nielsen. The lack of a compelling reason to select a different classification system instead of Nielsen weighs in favor of our decision to use Nielsen Local TV Report for purposes of implementing the LPPA.

40. Finally, we decline the requests of three other commenters who argue in favor of other alternatives to Nielsen DMAs. One Ministries advocates that the Commission should allow LPTV stations to demonstrate that the geographic area covered by the station is a subset of a larger DMA, such as when the station is in a hyphenated DMA, *i.e.* Chico-Redding.¹⁸¹ One Ministries argues that Nielsen identifies Chico and Redding separately for purposes of radio markets, that LPTV stations cover roughly the same area as radio stations, and that no LPTV station in Chico-Redding covers both of those cities.¹⁸² The LPPA directs that the Commission define DMA using Nielsen or an "equivalent" system of local TV markets, and dividing Nielsen hyphenated markets into separate markets for purposes of the LPPA would not be "equivalent" to the system established by Nielsen. As NAB notes,¹⁸³ more than 40 percent of Nielsen markets are hyphenated, and allowing these markets to

181. *See* One Ministries Comments at 2.

182. *Id.*

183. *See* NAB Comments at 3. *See also* <https://ustvdb.com/seasons/2022-23/markets/>.

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be treated as separate markets would create a system that is dramatically different from the current Nielsen DMA market definitions.¹⁸⁴ JB Media Group argues that Nielsen DMAs do not account for variables such as interference that “can significantly impact viewership” and urges “an alternative approach that takes into account interference, actual households, and signal power under different weather conditions.”¹⁸⁵ We find that it would be impractical and lead to delay in implementing the LPPA for Commission staff to define markets based on factors such as weather and actual viewership, and JB Media Group does not offer an existing alternative market definition based on these factors. Finally, RCC argues that the Commission should allow all LPTV stations whose “Section 307(b) community of license has fewer than

184. NAB agrees that allowing some or all of the hyphenated DMAs to become separate television markets for purposes of the LPPA would create a set of alternative markets that are “radically different” from Nielsen DMAs. NAB Comments at 3. NAB also argues that authorization of new Class A stations could impede the transition to ATSC 3.0. *See* NAB Comments at 4. We agree with LPTVBA and Flood that we should not consider the impact of the LPPA on the ATSC 3.0 transition. *See* LPTVBA Reply Comments at 5-6, Flood Reply Comments at 5-6. We conclude that Congress did not intend that we consider the impact of the LPPA on the transition to ATSC 3.0. In the LPPA, Congress created specific, limited eligibility requirements that created a balanced approach to elevate certain LPTV stations in smaller DMAs to primary status. We do not believe Congress intended that we further limit eligibility under the Act by considering hypothetical limitations potentially imposed on stations in the future in connection with the transition to ATSC 3.0.

185. JB Media Group Comments at 1-2.

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95,000 TV households” to convert to Class A status.¹⁸⁶ We conclude that such a system of defining local TV markets would be very different than the one required by the LPPA to be “equivalent” to the system established by Nielsen, which defines larger geographic regions than community of license.¹⁸⁷

186. RCC Comments at 6. RCC further argues that the Commission’s reliance on a privately created DMA definition renders the LPPA unconstitutional as it adopts an “unconstitutional industrial code . . . to license protected Class A TV broadcast stations.” *Id.* at 18. We reject this argument. Congress does not run afoul of subdelegation principles because it permits an agency to use an outside entity’s market definition for a particular purpose specified in the statute. There is no assignment of unguided or unchecked authority here. Finally, we also reject RCC’s argument that the LPPA “prohibits the Commission from displacing any LPTV licensee, regardless of whether the license contains a Class A designation, for the purpose of selling that LPTV spectrum at auction.” RCC Comments at 17. The LPPA is silent with respect to the issue of auctioning broadcast spectrum, and there is no evidence that Congress intended that we consider this issue as part of our implementation of the LPPA.

187. RCC also argues that “the Commission’s proposed licensing rules improperly removes LPTV stations from their 47 U.S.C. § 307(b) communities of license and reassigns them to much larger DMA markets in the name of ‘protecting’ those small LPTV stations.” RCC Comments at 3. We disagree with this characterization of our decision to use Nielsen DMAs for purpose of the LPPA. Our decision is consistent with the LPPA, relates only to implementation of the LPPA, and does not affect the communities LPTV stations are licensed to serve.

*Appendix D***5. License Standards (Ongoing Eligibility Requirements)**

41. We will not require LPPA Class A stations to continue to comply with the 95,000 TV household threshold if the population in the station's DMA later exceeds the threshold amount as a result of changes beyond the station's control. In the *NPRM*, the Commission stated its belief that the LPPA requirement that stations remain in compliance with the Act's eligibility requirements for the term of the Class A license¹⁸⁸ means that stations that convert to Class A status must continue to operate in DMAs with not more than 95,000 television households in order to maintain their Class A status.¹⁸⁹ The Commission noted that, under this interpretation of the Act, a station that converted to Class A status pursuant to the LPPA would no longer be eligible to retain Class A status if the population in its DMA later grows to more than 95,000 television households.¹⁹⁰

42. All of the commenters that addressed this interpretation of the Act oppose requiring LPPA Class A stations to remain in DMAs that meet the threshold population restriction, at least without some exceptions. Commenters argue that if the Commission were to require continued compliance with this restriction, licensees would lack regulatory certainty to pursue Class A status, which would undermine the economic viability of Class

188. *See* LPPA Sec.2(c)(3)(A)-(B).

189. *See NPRM* at para. 38.

190. *Id.*

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A stations, and thus fewer stations would likely apply.¹⁹¹ Commenters also contend that it would be unfair to mandate that a station lose rights through no fault of its own if the population rose above the 95,000 threshold,¹⁹² that the proposal would limit a licensee's ability to modify its facilities in the future (*e.g.*, by relocating),¹⁹³ and that the proposal would impose different license terms for LPPA Class A stations than for existing Class A stations, which face no similar possible loss of their Class A status.¹⁹⁴

43. Commenters also argue that the Commission proposal is not required by the statute.¹⁹⁵ Section 2(c)(2)(B)(iii) of the LPPA states that the Commission may approve conversion to Class A status for a station that “as of the date of enactment of this Act, operates in a Designated Market Area with not more than 95,000 television households.”¹⁹⁶ While Section 2(c)(3)(B) directs that a converted station is to remain in compliance with paragraph (2)(B)'s eligibility requirements during the term of the license, commenters argue that this language

191. *See* Flood Comments at 12-14; Identical Comments at 3-5; Lockwood Comments at 4-6; NAB Comments at 5; NPG Comments at 7-8. *See also* Flood Reply Comments at 4; LPTVBA Reply Comments at 6-7.

192. *Id.*

193. *See* Identical Comments at 4.

194. *See* Flood Comments at 13-14.

195. *See* Lockwood Comments at 4-5; Identical Comments at 4-5; NPG Comments at 7.

196. LPPA Sec.2(c)(2)(B)(iii).

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is properly interpreted to require only that a station be in compliance with the DMA requirement “as of” the date of enactment of the LPPA (January 5, 2023), not that it remain in compliance going forward.¹⁹⁷

44. We are persuaded by commenters who argue that a station, once it converts to Class A status pursuant to the LPPA, should not later lose eligibility and therefore be required to revert back to an LPTV station with secondary spectrum use status as a result of changes beyond the station’s control.¹⁹⁸ We conclude that Congress did not intend for LPPA Class A stations to subsequently lose Class A status through DMA changes that are not under the control of the station because Congress intended that the communities served by these stations should be able to rely on uninterrupted service from the stations.¹⁹⁹

197. Lockwood also notes that the FCC measures the number of TV households for purposes of its national TV, local TV, and local radio ownership cap “at the time of grant” of the application, and that divestiture is not required if a licensee later exceeds the threshold audience reach or market size/ranking. *See* Lockwood Comments at 5-6.

198. *See, e.g.*, REC Comments at 6 (arguing that if Nielsen changes a DMA designation or the population of the DMA grows beyond the threshold amount, it should have no impact on the status of the Class A station if they remain in the same community).

199. *See* Activity Report of the House Committee on Energy and Commerce, Low Power Protection Act, H.R.117-702 (Jan 2, 2023) (introduced as S. 3405) (stating the statute “would afford [low power television stations] with protections against harmful interference and ensure the communities served by such stations can receive news, emergency information, and other broadcasts without disruption”).

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Accordingly, we will not require LPPA Class A stations to continue to comply with the 95,000 TV household threshold if the population in the station's DMA later exceeds the threshold amount as a result of changes beyond the station's control. We find that the reasons that a station may no longer comply with the 95,000 TV household threshold that are beyond the station's control are a change in the market size through (1) population growth, (2) a change in the boundaries of a qualifying DMA such that the population of the DMA exceeds 95,000 television households, or (3) the merger of a qualifying DMA into another DMA such that the combined DMA exceeds the threshold amount.

45. We will not, however, permit an LPPA Class A station to maintain its Class A status if the size of the market it serves increases beyond 95,000 television households due to a change within the control of the station. For instance, we will not permit an LPPA Class A station to initiate a move to a different DMA that does not meet the LPPA population threshold at the time of the move and still retain the station's Class A status. We interpret the LPPA's continuing compliance mandate to preclude changes under the station's control that would result in the station's failure to continue to comply with the Act's eligibility requirements. We disagree with those commenters who argue that the Act requires only that the station be in compliance with the DMA requirement as of January 5, 2023.²⁰⁰ This reading of section 2(c)(2)(B) (iii) of the Act is contrary to the language of section 2(c)

200. *See supra* para. 43.

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(3)(B), which does not carve out the 95,000 TV household threshold requirement from the continuing compliance mandate. Such an interpretation would also undercut the purpose of the LPPA to strengthen protections for TV stations located in smaller DMAs,²⁰¹ as it would allow LPPA Class A stations to move to DMAs with larger populations, depriving smaller DMAs of the service these stations provide. We also disagree with those commenters who argue that stations that convert to Class A status pursuant to the LPPA should be able to initiate later site changes that would move the station to a non-qualifying DMA.²⁰² The language of the Act requires that LPPA Class A licensees remain in compliance with the LPPA's eligibility requirements for the term of their Class A

201. LPPA Sec.2(c)(2)(B)(iii) (limiting eligibility for Class A status to stations operating in a DMA with not more than 95,000 TV households).

202. *See, e.g.*, Communications Technologies Comments at 2-3 (arguing that it would be more equitable to require that stations operate for a fixed period of time (*e.g.*, one year) before proposing a site change to a non-qualifying DMA and adopt other criteria that would evaluate the public interest in terms of the number of other services available in the area currently served by the station versus the proposed new area); REC Comments at 6 (arguing that an LPPA Class A station should be permitted to retain its Class A status if a modification proposed by the station, and any subsequent modifications, “still result in the station providing a noise limited contour within at least 50 percent of the noise limited contour the station had at the time the station it was granted a conversion to Class A status.” This would “prevent the station from making multiple ‘hops’ to move the station to a more desirable market while still affording stations the flexibility to adapt to changing situations” regarding tower siting, etc.).

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license, including the requirement that they operate in a DMA with no more than 95,000 TV households. Apart from changes to a DMA that are beyond the station's control, we will require that LPPA Class A licensees remain in compliance with the 95,000 TV household threshold DMA requirement for the term of the Class A license. Stations that choose to pursue a non-compliant modification may do so, but will have to surrender their Class A status.

C. Application Process

46. As proposed in the *NPRM*, we will evaluate applications to convert to Class A status pursuant to the LPPA as a modification of the LPTV station's existing license. No commenters addressed this issue. For purposes of the LPPA, applications to convert to Class A status will be limited to the conversion of existing LPTV facilities as they exist at the time of application, without consideration of any pending modifications to those facilities or unbuilt construction permits.²⁰³ This approach will allow for expeditious consideration of all applications, and will eliminate delays that could arise from the possibility of mutual exclusivity between a Class A conversion application and other licensed full power or Class A facilities, were we to entertain license modifications during the application window. A licensed LPTV station holding a construction permit to modify its facilities will either need to license those permitted

203. In other words, stations will not be permitted to seek technical modification of their facilities in conjunction with their Class A conversion application. This avoids potential confusion regarding the facilities to be protected as a Class A station.

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facilities before applying to convert to Class A status, or may apply for a new modification after the Commission has processed the applications from the window.²⁰⁴

47. When implementing the CBPA, the Commission required stations applying for Class A status to provide local public notice of applications for Class A status “since the nature of the underlying service is changing from secondary to primary service.”²⁰⁵ We adopt the tentative conclusion in the *NPRM*, that for the same reason we will require an applicant seeking Class A status pursuant to the LPPA to provide local public notice of the application. No commenters addressed this issue.

48. *Application Form.* As proposed in the *NPRM*, we will require that applications for modification of an LPTV station’s existing license to convert to Class A status pursuant to the LPPA be filed using FCC Form 2100, Schedule F.²⁰⁶ Such applications must be filed

204. This ensures that any later-filed modification is properly flagged in our database as a Class A record.

205. *Class A R&O*, 15 FCC Rcd at 6398, para. 108.

206. The Commission will add to its Licensing Management System database (LMS) as part of FCC Form 2100, Schedule F, portions of the existing FCC Form 302-CA (Application for Class A Television Broadcast Station Construction Permit or License). That form was developed for use by LPTV stations applying to convert to Class A status under the CBPA. Once an LPTV station obtains Class A status, it can file for minor modification of license using FCC Form 2100, Schedule E.

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electronically and must include the required filing fee.²⁰⁷
No commenters addressed these issues.²⁰⁸

D. TV Broadcast Incentive Auction, Post-Auction Transition, and Reimbursement

49. We affirm the tentative conclusion in the *NPRM* that nothing in the LPPA or in our implementation of the Act can or will affect the Commission's work related to the Broadcast Incentive Auction.²⁰⁹ No commenters addressed this issue.

E. Digital Equity and Inclusion

50. The Commission sought comment in the *NPRM* on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility. Only one commenter, REC, addressed this issue. In REC's view, the overall impact to digital equity and inclusion of the LPPA "is slightly negative" as some LPTV stations on channels 5 and 6 could obtain primary status, thus limiting the ability in some areas to implement full-service FM broadcasting as a part of REC's WIDE-FM proposal, which REC asserts would increase the number of radio

207. The filing fee for an application for a "new license" for a Class A station is \$ 425.00. *See* 47 CFR § 1.1104.

208. We direct the Media Bureau to implement necessary updates to the form and issue a Public Notice announcing availability at the appropriate time.

209. *See NPRM* at para. 43.

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voices.²¹⁰ While REC notes that the language of the Act is outside the Commission’s control,²¹¹ REC asserts that its proposals in response to the *NPRM* will help ensure that rural LPTV stations that provide a minimal level of locally originated programming will be given “a level of expectation of longevity” as a result of changing from secondary to primary status, which “could help persons who live in rural or Tribal areas” to continue to receive local TV service.²¹² In addition, REC comments that requiring LPPA Class A stations to comply with full service rules will allow the Commission to better measure diversity in broadcast ownership and, through the public file process, require stations to be more accountable to their local audiences.²¹³

51. We appreciate receiving REC’s views and have considered them fully in reaching our conclusions herein regarding implementation of the LPPA. We acknowledge the importance of advancing diversity, equity, inclusion, and accessibility, and we believe that the LPPA itself, and the rules we adopt herein implementing the Act, will advance those aims.

F. Other Issues

52. *Must Carry Rights*. Two commenters, RCC and Dockins, argue that the Commission should amend

210. REC Comments at 6.

211. *Id.*

212. *Id.* at 7.

213. *Id.*

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its rules to give Class A stations must carry status.²¹⁴ RCC argues that the Commission should “clarify” that Class A stations are incorrectly classified as “low power stations,” whose carriage is limited as provided in section 76.55(d)²¹⁵ of our rules, but should instead be classified as “local commercial television stations” which are entitled to more expansive carriage rights as provided in section 76.555(c).²¹⁶ Dockins asserts that “there is no logical reason why the Commission cannot amend the rules to allow must-carry status for Class A stations” and that the “historic failure” of the Commission to give Class A stations must-carry rights “appears to be an oversight” that should be corrected.²¹⁷

53. Consistent with the Commission’s conclusion in the *Class A MO&O* with respect to LPTV stations that converted to Class A status pursuant to the CBPA, we conclude that LPPA Class A stations have the same limited must carry rights as LPTV stations, and do not have the same must carry rights as full service commercial television stations under section 76.55(c) of our rules.²¹⁸ In

214. See RCC Comments at 15-16; Dockins Comments at 3-4. See also RCC Reply Comments at 8.

215. 47 CFR § 76.55(d).

216. 47 CFR § 76.55(c). See RCC Comments at 15.

217. Dockins Comments at 4.

218. See *Class A MO&O*, 16 FCC Rcd at 8259-60, paras. 39-43. Section 614 of the Communications Act of 1934, as amended, establishes different sets of must carry eligibility requirements for local commercial television stations and for “qualified low power

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the *Class A MO&O*, the Commission noted that both the language of the CBPA and the accompanying legislative history were silent with respect to the issue of must carry rights for Class A stations, and concluded that it is unlikely that Congress intended to grant Class A stations full must carry rights, equivalent to those of full-service stations, without addressing the issue directly.²¹⁹ The LPPA is also

stations.” 47 U.S.C. § 534. Under very narrow circumstances, low power stations can become “qualified” and eligible for must carry. 47 U.S.C. § 534(h)(2). For example, if a full power station is located in the same county or other political subdivision (of a State) as an otherwise qualified low power station, then the low power station will not be eligible for cable must-carry status. *See* 47 U.S.C. § 534(h)(2)(F). *See also Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, MM Docket No. 92-259, Report and Order, 8 FCC Rcd 2965, 2983, para. 67 & n.211 (1993) (*Must Carry Order*). Moreover, an otherwise qualified LPTV station qualifies for cable carriage only if the community of license of that station and the franchise area of the cable system on which it seeks carriage are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of the community of license on that date did not exceed 35,000. *See* 47 U.S.C. § 534(h)(2)(E).

219. The Commission noted in the *Class A MO&O* that its conclusion with respect to Class A must carry rights was consistent with the view expressed by the Commission in its Report and Order implementing the Satellite Home Viewer Improvement Act of 1999. *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999, Broadcast Signal Carriage Issues, Retransmission Consent Issues*, Report and Order, 16 FCC Rcd 1918 (2000). In that Order, the Commission concluded that Class A stations are low power stations for mandatory carriage purposes, and are therefore not entitled to mandatory satellite carriage.

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silent with respect to the issue of must carry rights, and we similarly conclude therefore that Congress did not intend to confer full must carry rights on LPPA Class A stations equivalent to full-service stations, and different from the rights of CBPA Class A stations, without addressing the issue in the statute. Instead, we find that Congress intended LPPA Class A stations to have the same limited must carry rights as LPTV stations and existing Class A stations. We thus decline to revise our rules as RCC and Dockins request.

54. *De Minimis Exception to the 95,000 TV Household Requirement.* We also decline to adopt a *de minimis* exception to the LPPA's 95,000 TV household eligibility requirement, as proposed by Lockwood.²²⁰ Lockwood argues that the Commission should adopt an exception of up to 5 percent to the 95,000 TV household amount to "further the underlying purpose" of the LPPA to afford eligibility for Class A protection to LPTV stations serving smaller DMAs.²²¹ Lockwood also argues that such an exception would afford flexibility in the case of fluctuations in the number of TV households in the DMA due to the methodology used to make the calculation or changes related to seasonal tourism or college/university populations.²²² Finally, Lockwood argues that the Commission has implemented *de minimis* exceptions to other of its regulatory requirements and has discretion

220. See Lockwood Comments at 6.

221. *Id.*

222. *Id.* at 7-8.

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to do so with respect to the LPPA as the Act expressly permits the Commission to select the appropriate system for determining DMAs.²²³

55. The language of the Act clearly requires that, to be eligible for Class A status, a station must operate in a DMA with no more than 95,000 TV households.²²⁴ The Act also requires that LPPA Class A licensees remain in compliance with the LPPA's eligibility requirements for the term of their Class A license.²²⁵ With respect to the Act's DMA limit, as discussed above we interpret this continuing compliance mandate to preclude changes under the station's control that would result in the station's failure to continue to comply with the 95,000 TV household threshold.²²⁶

56. As discussed above, while the LPPA provides the Commission with additional discretion in evaluating applicants for Class A status to treat a station as qualifying for Class A status if "the Commission determines that the public interest, convenience, and necessity would be served" or "for other reasons determined by the Commission,"²²⁷ we are not inclined to expand the specific

223. *Id.*

224. LPPA Sec.2(c)(2)(B)(iii).

225. LPPA Sec.2(c)(3)(B).

226. *See supra* paras. 44-45.

227. *See supra* para. 27. *See also* 47 U.S.C. § 336(f)(2)(B).

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qualifying criteria beyond that identified in the statute.²²⁸ The LPPA provides precise and limited eligibility criteria and, except in very limited circumstances, we are not inclined to expand the specific qualifying criteria beyond that identified in the statute. Accordingly, we decline to adopt a blanket *de minimis* exception to the DMA eligibility requirement. As discussed above, we will allow deviation from the strict statutory eligibility criteria in the LPPA only on a case-by-case basis where such deviations are insignificant or where there are compelling circumstances such that equity mandates a deviation.²²⁹

IV. PROCEDURAL MATTERS

57. *Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA),²³⁰ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”²³¹ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix C.

228. *See supra* para. 28.

229. *Id.*

230. *See* 5 U.S.C. §§ 601-612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

231. *See* 5 U.S.C. § 605(b).

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58. *Final Paperwork Reduction Act Analysis.* This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).²³² The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the *Federal Register* at a later date seeking these comments. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA),²³³ we will seek specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

59. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that these rules are non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of the *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

232. The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

233. The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.). See 44 U.S.C. § 3506(c)(4).

*Appendix D***V. ORDERING CLAUSES**

60. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 2, 4(i), 4(j), 303, 307, 309, 311, and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303, 307, 309, 311, 336(f), and the Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023), this *Report and Order* **IS ADOPTED**, effective thirty (30) days after the date of publication in the *Federal Register*.

61. **IT IS FURTHER ORDERED** that the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B and such amendments will be effective 30 days after publication in the Federal Register, except for 47 C.F.R. §§ 73.6030(c) and 73.6030(d) which contain new or modified information collection requirements that require review by OMB under the PRA. The Commission directs the Media Bureau to announce the effective date of that information collection in a document published in the Federal Register after the Commission receives OMB approval.

62. **IT IS FURTHER ORDERED** that, pursuant to 47 U.S.C. 155(c), the Media Bureau is granted delegated authority for the purpose of amending FCC Form 2100 as necessary to implement the licensing process adopted herein and to establish the one-year application filing window once the revised form is available for use by applicants, and for the purpose of submitting the report to Congress required pursuant to the Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193, Sec. 2(d) (2023).

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63. **IT IS FURTHER ORDERED** that the Media Bureau is granted delegated authority for the purpose of activating an OPIF for LPTV stations that apply to convert to Class A status pursuant to the LPPA and of informing applicants when their OPIF is ready for the applicant to upload documents required to be maintained in OPIF.

64. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary **SHALL SEND** a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

65. **IT IS FURTHER ORDERED** that Office of the Managing Director, Performance Program Management, **SHALL SEND** a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS
COMMISSION

Marlene H. Dortch
Secretary

100a

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APPENDIX A

List of Commenters

Comments

Block Communications, Inc. (Block)

Communications Technologies

County of Los Angeles, California

Dockins Communications, Inc. (Dockins)

Flood Communications (Flood)

Channel 23 WXWZ, JB Media Group,
Jose Berrios Diaz (JB Media Group)

Lockwood Broadcasting, Inc. (Lockwood)

LPTV Broadcasters Association (LPTVBA)

National Association of Broadcasters (NAB)

News-Press & Gazette Broadcasting (NPG)

One Ministries, Inc.

Radio Communications Corporation, LPTV Station
W24EZ-D Formerly Class A Station W28AJ (RCC)

REC Networks (REC)

KFLA-LD; Data Wave, LLC; M&C Broadcasting
Corporation – WCEA-LD; The Videohouse Inc.; ATV
Holdings, Inc.; G.I.G., Inc.; Michael Karr; Caribevision

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Holdings; Tycke Media, LLC; America CV Station Group, Inc.; Viper Communications, Inc.; Lowcountry 34 Media, LLC; Paramount Broadcasting Communication LLC; Look Media; Lawrence F. Loesch; Agape Broadcasters Inc; Richardson Broadcasting; King Forward Inc; KADO/ Word of Life Ministries, Inc; Dockins Broadcast Group (collectively referred to herein as “Identical Comments”)

Reply Comments

Flood Communications

LPTV Broadcasters Association

Radio Communications Corp.

REC Networks

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APPENDIX B

Final Rules

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The Authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. Amend Section 73.3580 by revising paragraph (c) to add new paragraph (c)(7) to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

...

(c) Applications requiring local public notice. The following applications filed by licensees or permittees of the following types of stations must provide public notice in the manner set forth in paragraphs (c)(1) through (7) of this section:

...

(7) Applications by LPTV stations to convert to Class A status pursuant to the Low Power Protection Act. The applicant shall both broadcast on-air announcements and give online notice.

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...

2. Section 73.6030 is adopted as follows.

§ 73.6030 Low Power Protection Act

(a) Definitions. For purposes of the Low Power Protection Act, a low power television station's Designated Market Area (DMA) shall be defined as the DMA where its transmission facilities (i.e., the structure on which its antenna is mounted) are located. DMAs are determined by Nielsen Media Research. A low power television station shall be defined in accordance with § 74.701(k).

(b) Eligibility Requirements. In order to be eligible for Class A status under the Low Power Television Protection Act, low power television licensees must:

(1) have been operating in a DMA with not more than 95,000 television households as of January 5, 2023;

(2) have been broadcasting a minimum of 18 hours per day between October 7, 2022 and January 5, 2023;

(3) have been broadcasting a minimum of at least three hours per week of locally produced programming between October 7, 2022 and January 5, 2023;

(4) have been operating in compliance with the Commission's requirements applicable to low power television stations between October 7, 2022 and January 5, 2023;

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(5) be in compliance with the Commission’s operating rules for full-power television stations from and after the date of its application for a Class A license; and

(6) demonstrate that the Class A station for which the license is sought will not cause any interference described in 47 U.S.C. 336(f)(7).

(c) **Application Requirements.** Applications for conversion to Class A status must be submitted using FCC Form 2100, Schedule F within one year beginning on the date on which the Commission issues notice that the rules implementing the Low Power Protection Act takes effect. The licensee will be required to submit, as part of its application, a statement concerning the station’s operating schedule during the 90 days preceding January 5, 2023 and a list of locally produced programs aired during that time period. The applicant may also submit other documentation, or may be requested by Commission staff to submit other documentation, to support its certification that the licensee meets the eligibility requirements for a Class A license under the Low Power Protection Act.

(d) **Licensing Requirements.** A Class A television broadcast license will only be issued under the Low Power Protection Act to a low power television licensee that files an application for a Class A Television license (FCC Form 2100, Schedule F), which is granted by the Commission.

(e) **Service Requirements.** Stations that convert to Class A status pursuant to the Low Power Protection Act are required to meet the service requirements specified

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in § 73.6001(b)-(d) of this chapter for the term of their Class A license. In addition, such stations must remain in compliance with the programming and operational standards set forth in the Low Power Protection Act for the term of their Class A license. In addition, such stations must continue to operate in DMAs with not more than 95,000 television households in order to maintain their Class A status unless the population in the station's DMA later exceeds 95,000 television households through (1) population growth, (2) a change in the boundaries of a qualifying DMA such that the population of the DMA exceeds 95,000 television households, or (3) the merger of a qualifying DMA into another DMA such that the combined DMA exceeds 95,000 television households. LPPA Class A stations will not be permitted to initiate a move to a different DMA with more than 95,000 television households at the time of the move and still retain their Class A status.

(f) Other regulations. From and after the date of applying for Class A status under the Low Power Protection Act, stations must comply with the requirements applicable to Class A stations specified in subpart J of this part (§§ 73.6000 through 73.6029) and must continue to comply with such requirements for the term of their Class A license.

*Appendix D***APPENDIX C****Final Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Act Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking (NPRM)* released March 30, 2023.² The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. The *Report and Order* adopts rules to implement the Low Power Protection Act (LPPA or Act),⁴ which was enacted on January 5, 2023. The LPPA provides certain

1. 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

2. *See Implementation of the Low Power Protection Act*, MB Docket No. 23-126, Notice of Proposed Rulemaking, FCC 23-23 (rel. March 30, 2023) (*NPRM*).

3. 5 U.S.C. § 604.

4. Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023).

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low power television (LPTV) stations with a “limited window of opportunity” to apply for primary spectrum use status as Class A television stations.⁵ The rules adopted herein reflect most of the Commission’s proposals in the *Implementation of the Low Power Protection Act, Notice of Proposed Rulemaking (NPRM)*⁶ in this proceeding, with limited exceptions.⁷ We establish herein the period during which eligible stations may file applications for Class A status pursuant to the LPPA, clarify eligibility and interference requirements, and establish the process for submitting applications for Class A status pursuant to the Act. Our rules provide eligible LPTV stations with a limited opportunity to apply for primary spectrum use status as Class A television stations, consistent with Congress’s directive in the LPPA.

3. We conclude that the application window will be limited to the one year application window contemplated by the Act, and that an application filed for Class A status must demonstrate that the LPTV station operated in a Designated Market Area (DMA) with not more than 95,000 television households on January 5, 2023. We also conclude that LPTV stations that convert to Class A

5. LPPA Sec.2(b).

6. *See Implementation of the Low Power Protection Act*, MB Docket No. 23-126, Notice of Proposed Rulemaking, FCC 23-23 (rel. March 30, 2023) (*NPRM*).

7. We received over thirty comments in response to the *NPRM*. Twenty of these commenters filed identical comments supporting the adopting of MSAs as an alternative local market methodology for determining eligibility under the LPPA

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status under the LPPA must comply with the interference protection standards set forth in section 336(f)(7) of the Communications Act of 1934, with the exception of those provisions that are now obsolete given the transition of all television stations from analog to digital operations. We apply the Commission's recently updated definition of an LPTV station for purposes of determining which stations are eligible for Class A status under the LPPA and codify in our rules the eligibility criteria set forth in the LPPA. We also implement provisions of the LPPA which provide that licenses issued to stations that convert to Class A status are subject to full power television station license terms and renewal standards, with certain exceptions. We conclude that LPPA Class A licensees are required to remain in compliance with the LPPA's eligibility requirements for the term of their Class A license, except for changes to the station's DMA that are beyond the control of the station. We conclude that we will evaluate Class A status to eligible LPTV stations as a modification of the station's existing license, and that nothing in the LPPA, or our rules implementing the Act, affects the Commission's work related to the Broadcast Incentive Auction. We address how our actions implementing the LPPA advance diversity, equity, inclusion, and accessibility and, lastly, decline to amend our rules to afford Class A stations must carry rights equivalent to full service stations and decline to adopt a de minimis exception to the LPPA's DMA eligibility requirement.

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B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.⁸

6. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities To Which the Proposed Rules will Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental

8. 5 U.S.C. § 604(a)(3).

9. 5 U.S.C. § 603(b)(3).

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jurisdiction.”¹⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹¹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹² Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

8. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”¹³ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.¹⁴ These establishments also produce or transmit visual programming to affiliated broadcast television

10. *Id.* § 601(6).

11. *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

12. 15 U.S.C. § 632.

13. See U.S. Census Bureau, *2017 NAICS Definition, “515120 Television Broadcasting,”* <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

14. *Id.*

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stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small.¹⁵ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.¹⁶ Of that number, 657 firms had revenue of less than \$25,000,000.¹⁷ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

9. As of September 30, 2023, there were 1,377 licensed commercial television stations.¹⁸ Of this total, 1,258

15. See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

16. See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

17. *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

18. *Broadcast Station Totals as of September 30, 2023*, Public Notice, DA 23-921 (rel. Oct. 3, 2023) (*October 2023 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-23-921A1.pdf>.

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stations (or 91.4%) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on October 4, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of September 30, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 380 Class A TV stations, 1,889 LPTV stations and 3,127 TV translator stations.¹⁹ The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. In implementing the LPPA, the *Report and Order* adopts new or additional reporting, recordkeeping or other compliance requirements for small and other entities. For example, the LPPA requires that, to be eligible for Class A status, during the 90 days preceding the date of enactment of the LPPA an LPTV station must have broadcast a minimum of 18 hours/day and an average

19. *Id.*

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of at least 3 hours per week of programming produced within the “market area” served by the station²⁰ and have been in compliance with the Commission’s requirements for LPTV stations.²¹ The rules also require that small and other applicants seeking to convert to Class A status under the LPPA certify in their application for Class A status that they have complied with these eligibility requirements during the 90 days preceding the January 5, 2023 enactment of the statute. An applicant must submit, as part of its application, a statement concerning the station’s operating schedule during the 90 days preceding January 5, 2023 and a list of locally produced programs aired during that time period. The applicant may also submit other documentation to support its certification that the licensee meets the eligibility requirements for a Class A license under the Low Power Protection Act. In addition, the Commission staff may also request additional documentation if necessary during consideration of the application.

11. Beginning on the date of its application for a Class A license and thereafter, a station “must be in compliance with the Commission’s operating rules for full-power stations.”²² We will apply to small and other applicants for Class A status under the LPPA, and to stations that are awarded Class A licenses under that statute, all Part 73 regulations except for those that cannot apply for

20. LPPA Sec.2(c)(2)(B)(i)(I), 47 U.S.C. § 336(f)(2)(A)(i)(II).

21. LPPA Sec.2(c)(2)(B)(i)(I), 47 U.S.C. § 336(f)(2)(A)(i)(III).

22. LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A)(ii).

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technical or other reasons. For example, Class A stations must comply with the requirements for informational and educational children's programming, the political programming and political file rules, and the public inspection file rule.

12. The LPPA requires that a station that converts to Class A status pursuant to the statute continue to meet the eligibility requirements of the LPPA during the term of the station's Class A license. To be eligible under the LPPA, in addition to other eligibility requirements, section 2(c)(2)(B)(iii) of the Act requires an LPTV station must "as of the date of enactment" of the LPPA operate in a DMA with not more than 95,000 television households.²³ Section 2(c)(3)(B) of the Act, however, requires that stations that convert to Class A status under the LPPA "remain in compliance" with paragraph (2)(B) "during the term of the license."²⁴ We interpret section 2(c)(3)(B) to require that stations that convert to Class A status, including small entities, remain in DMAs with not more than 95,000 television households in order to maintain their Class A status except for situations in which the population in the station's DMA later exceeds the threshold amount through (1) population growth, (2) a change in the boundaries of a qualifying DMA such that the population of the DMA exceeds 95,000 television households, or (3) the merger of a qualifying DMA into another DMA such that the combined DMA exceeds the threshold amount. LPPA Class A stations will not be

23. LPPA Sec.2(c)(2)(B)(iii).

24. LPPA Sec.2(c)(3)(B).

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permitted to initiate a move to a different DMA with more than 95,000 television households at the time of the move and still retain their Class A status. In addition, licensed Class A stations must also continue to meet the minimum operating requirements for Class A stations.²⁵ Licensees unable to continue to meet the minimum operating requirements for Class A television stations, or that elect to revert to low power television status, must promptly notify the Commission, in writing, and request a change in status.²⁶ The *Report and Order* also requires that stations that convert to Class A status pursuant to the LPPA comply with all rules applicable to existing Class A stations, including interference requirements.

13. The *Report and Order* requires small and other stations seeking to convert to Class A designation pursuant to the LPPA to submit an application to the Commission within one year of the effective date of the rules adopted in this proceeding. The *Report and Order* concludes that the Commission will not continue to accept applications to convert to Class A status under the LPPA beyond the one-year application period set forth in the statute. In addition, we will allow deviation from the strict statutory eligibility criteria under the LPPA only where deviations are insignificant or where there are compelling circumstances such that equity mandates a deviation.²⁷ In

25. 47 CFR § 73.6001(c).

26. *Id.* § 73.6001(d).

27. The LPPA provides that the Commission may approve an application for Class A status if the application satisfies section 336(f)(2) of the Communications Act of 1934, codified as part of

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the *NPRM*, we noted that one example of such compelling circumstances might be “a natural disaster or interference conflict which forced the station off the air” during the 90-day period preceding enactment of the statute.

14. We expect the actions we have taken in the *Report and Order* achieve the goals of implementing the LPPA without placing significant additional costs and burdens on small entities. At present, there is not sufficient information on the record to quantify the cost of compliance for small entities, or to determine whether it will be necessary for small entities to hire professionals to comply with the adopted rules. However, we anticipate that the compliance obligations for small stations will be outweighed by the benefits provided through the LPPA’s granting of a limited opportunity for LPTV stations to apply for primary status as a Class A television licensee.

the CBPA. LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A). The CBPA provided the Commission with additional discretion in evaluating applicants for Class A status if “the Commission determines that the public, interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.” 47 U.S.C. § 336(f)(2)(B). In the *Class A Order*, the Commission determined that it would allow deviation from the strict statutory eligibility criteria in the CBPA “only where such deviations are insignificant or when we determine that there are compelling circumstances, and that in light of those compelling circumstances, equity mandates such a deviation.” *Class A Order*, 15 FCC Rcd at 6369, para. 33.

*Appendix D***F. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered**

15. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”²⁸

16. Through comments provided by interested parties during the rulemaking proceeding, the Commission considered various proposals from small and other entities. The adopted rules reflect the Commission’s efforts to implement the LPPA by balancing the Commission’s proposals in the *NPRM* with alternative proposals provided by the commenters and weighing their benefits against their potential costs to small and other entities. As discussed above, the LPPA provides a limited window of opportunity for an LPTV station to attain primary status as a Class A TV station, if the LPTV station meets the eligibility criteria set forth in the LPPA. The *Report and Order* adopts most of the Commission’s proposals in the *NPRM*, with one significant exception. We do not adopt the proposal to require that all licensees that convert to Class A status pursuant to the LPPA remain in compliance with the LPPA’s requirement that the station be in a DMA

28. 5 U.S.C. § 604(a)(6).

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with no more than 95,000 TV households for the term of their Class A license. Instead, we conclude that LPPA Class A stations will not be required to continue to comply with the 95,000 TV household threshold if the population in the station's DMA later exceeds the threshold amount either through (1) population growth, (2) a change in the boundaries of a qualifying DMA such that the population of the DMA exceeds 95,000 television households, or (3) the merger of a qualifying DMA into another DMA such that the combined DMA exceeds the threshold amount. This one change to our approach in implementing the LPPA may minimize a potentially significant impact on a small entity in circumstances where the station is in a DMA that later exceeds the threshold TV household eligibility amount for reasons beyond the station's control. We also considered but did not, however, permit an LPPA Class A station to initiate a move to a DMA that does not meet the 95,000 TV household eligibility requirement and still retain its status as a Class A station.

17. Additionally, in the *Report and Order* the Commission adopted a simplified license application approach regarding the documentation stations are required to submit as part of their application for a Class A license. Rather than mandating that an applicant provide specific additional documents to support its application, the *Report and Order* permits an applicant to provide whatever additional documentation the applicant has that best support its certification that it met the operational and programming requirements of the LPPA during the eligibility period. This flexibility minimizes the impact on small LPTV stations, some of which may have difficulty

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providing specific mandated documents because they do not have the necessary documents or lack the resources necessary to provide the document in a form that supports their certification. We also took the step of reducing a potential economic burden to small LPTV stations by adopting the proposal to use data from the Nielsen Local TV Station Information Report (Nielsen Local TV Report) in order to determine the DMA where the LPTV station's transmission facilities are located for purposes of eligibility. The Commission considered proposed alternatives such as using census data for Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs), or Comscore data. However, we have determined that using the Nielsen Local TV Report would be less burdensome to small and other LPTV stations based on current industry practices and because certain data, such as DMA station assignment information, can be provided to stations at no cost.

G. Report to Congress

18. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.²⁹ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order*, and FRFA (or summaries thereof) will also be published in the *Federal Register*.³⁰

29. *See Id.* § 801(a)(1)(A).

30. *See Id.* § 604(b).

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

MB Docket No. 23-126

IN THE MATTER OF IMPLEMENTATION
OF THE LOW POWER PROTECTION ACT

ERRATUM

Released: January 26, 2024

By the Chief, Media Bureau

On December 12, 2023, the Commission released a *Report and Order*, FCC 23-112, in the above captioned proceeding. This Erratum amends the *Report and Order* as indicated below:

1. Paragraph 61 is corrected to read as follows:

“61. IT IS FURTHER ORDERED that the Commission’s rules ARE HEREBY AMENDED as set forth in Appendix B and such amendments will be effective 30 days after publication in the Federal Register, except for 47 C.F.R. §§ 73.6030(c), 73.6030(d), and 73.3580(c) (7), which contain new or modified information collection requirements that require review by OMB under the PRA. The Commission directs the Media Bureau to announce the effective

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date of that information collection in a document published in the Federal Register after the Commission receives OMB approval.”

2. Paragraph (b)(3) of section 73.6030 is corrected to read as follows:

“* * * * *

(3) Have been broadcasting an average of at least three hours per week of locally produced programming between October 7, 2022 and January 5, 2023;

* * * * *”

FEDERAL COMMUNICATIONS
COMMISSION

Holly Saurer
Chief
Media Bureau

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**APPENDIX E — LOW POWER PROTECTION ACT,
ENACTED JANUARY 5, 2023**

PUBLIC LAW 117–344—JAN. 5, 2023

136 STAT. 6193

Public Law 117–344
117th Congress

An Act

To require the Federal Communications Commission to issue a rule providing that certain low power television stations may be accorded primary status as Class A television licensees, and for other purposes.

*Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Low Power Protection Act”.

SEC. 2. LOW POWER TV STATIONS.

(a) DEFINITIONS.—In this section—

(1) the term “Commission” means the Federal Communications Commission;

(2) the term “Designated Market Area” means—

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(A) a Designated Market Area determined by Nielsen Media Research or any successor entity; or

(B) a Designated Market Area under a system of dividing television broadcast station licensees into local markets using a system that the Commission determines is equivalent to the system established by Nielsen Media Research; and

(3) the term “low power TV station” has the meaning given the term “digital low power TV station” in section 74.701 of title 47, Code of Federal Regulations, or any successor regulation.

(b) PURPOSE.—The purpose of this section is to provide low power TV stations with a limited window of opportunity to apply for the opportunity to be accorded primary status as Class A television licensees.

(c) RULEMAKING.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Commission shall issue a notice of proposed rulemaking to issue a rule that contains the requirements described in this subsection.

(2) REQUIREMENTS.—

(A) IN GENERAL.—The rule with respect to which the Commission is required to issue notice under paragraph (1) shall provide that, during the 1-year

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period beginning on the date on which that rule takes effect, a low power TV station may apply to the Commission to be accorded primary status as a Class A television licensee under section 73.6001 of title 47, Code of Federal Regulations, or any successor regulation.

(B) CONSIDERATIONS.—The Commission may approve an application submitted under subparagraph (A) if the low power TV station submitting the application—

(i) satisfies—

(I) section 336(f)(2) of the Communications Act of 1934 (47 U.S.C. 336(f)(2)) and the rules issued under that section, including the requirements under such section 336(f)(2) with respect to locally produced programming, except that, for the purposes of this subclause, the period described in the matter preceding subclause (I) of subparagraph (A)(i) of such section 336(f)(2) shall be construed to be the 90-day period preceding the date of enactment of this Act; and

(II) paragraphs (b), (c), and (d) of 73.6001 of title 47, Code of Federal Regulations, or any successor regulation;

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(ii) demonstrates to the Commission that the Class A station for which the license is sought will not cause any interference described in section 336(f)(7) of the Communications Act of 1934 (47 U.S.C. 336(f)(7)); and

(iii) as of the date of enactment of this Act, operates in a Designated Market Area with not more than 95,000 television households.

(3) **APPLICABILITY OF LICENSE.**—A license that accords primary status as a Class A television licensee to a low power TV station as a result of the rule with respect to which the Commission is required to issue notice under paragraph (1) shall—

(A) be subject to the same license terms and renewal standards as a license for a full power television broadcast station, except as otherwise expressly provided in this subsection; and

(B) require the low power TV station to remain in compliance with paragraph (2)(B) during the term of the license.

(d) **REPORTING.**—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report regarding the implementation of this section, which shall include—

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(1) a list of the current, as of the date on which the report is submitted, licensees that have been accorded primary status as Class A television licensees; and

(2) of the licensees described in paragraph (1), an identification of each such licensee that has been accorded the status described in that paragraph because of the implementation of this section.

(e) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to affect a decision of the Commission relating to completion of the transition, relocation, or reimbursement of entities as a result of the systems of competitive bidding conducted pursuant to title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1401 et seq.), and the amendments made by that title, that are collectively commonly referred to as the “Television Broadcast Incentive Auction”.

Approved January 5, 2023.

**APPENDIX F — EXCERPT OF
47 U.S.C. § 307(a),(b)**

APPENDIX F — 47 U.S.C. § 307(a),(b)

(a) Grant

The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this chapter, shall grant to any applicant therefor a station license provided for by this chapter.

(b) Allocation of facilities

In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

**APPENDIX G — EXCERPT OF
U.S. CONST. ART. I, SEC. 8, CL. 3**

APPENDIX G — U.S. Const. Art. I, Sec. 8, Cl. 3

[The Congress shall have Power . . .] To regulate
Commerce with foreign Nations, and among the several
States, and with the Indian Tribes; . . .